

EXHIBIT 2

Case No. 14-CV-704-GKF-JFJ

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OKLAHOMA
3
4 UNITED STATES OF AMERICA,
5 Plaintiff,
6 and
7 OSAGE MINERALS COUNCIL,
8 Intervenor-Plaintiff,
9 vs. Case No. 14-CV-704-GFK-JFG
10 OSAGE WIND, LLC;
11 ENEL KANSAS, LLC; and
12 ENEL GREEN POWER
13 NORTH AMERICA, INC.,
14 Defendants.

15 VIDEO ZOOM DEPOSITION OF KIMBERLEE CENTERA
16 TAKEN ON BEHALF OF THE INTERVENOR-PLAINTIFF
17 ON MAY 14, 2021, BEGINNING AT 10:49 A.M.
18 REPORTER PRESENT IN YUKON, OKLAHOMA

19 APPEARANCES:

20 On behalf of the PLAINTIFF

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27 THE VIDEOGRAPHER: Jake Underwood

28 REPORTED BY: Janna Pirtle, CSR, RPR

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5/14/2021

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STIPULATIONS

It is stipulated that the deposition of
KIMBERLEE CENTERA may be taken pursuant to
agreement and in accordance with Federal Rules
of Civil Procedure, on May 14, 2021, before
Janna Pirtle, Certified Shorthand Reporter.

1 THE VIDEOGRAPHER: This is the video
2 deposition of Kimberlee Centera taken on behalf
3 of the intervenor-plaintiff in the matter of
4 United States of America and Osage Minerals
5 Council versus Osage Wind. Case is filed in the
6 United States District Court for the Northern
7 District of Oklahoma, Case Number
8 14-CV-704-GKF-JFJ [sic]. We are on the record
9 at 10:49 a.m.

10 Will counsel please state their
11 appearances for the record.

12 MS. NAGLE: Yes, good morning. My name
13 is Mary Kathryn Nagle. I'm a partner at
14 Pipestem & Nagle, and I represent the
15 intervenor-plaintiff, the Osage Minerals
16 Council. With me here today is my colleague,
17 Shoney Blake, also from Pipestem & Nagle.

18 MR. ASHWORTH: Stuart Ashworth on behalf
19 of the U.S. Attorney's office. I also have
20 Cathy McClanahan, an attorney with the U.S.
21 Attorney's office, Michelle Hammock, and
22 Chistina Watson, paralegals for the
23 U.S. Attorney's office.

24 MS. STEVENSON: Sarah Stevenson with the
25 Modrall Sperling Law Firm on behalf of

1 defendants, Osage Wind, LLC; ML Kansas, LLC;
2 Enel Green Power North America, Inc. Also
3 online today for defendants are Lynn Slade, Ryan
4 Ray, and Dominic Martinez. I will state for the
5 record that I am here in the same room as the
6 witness, Ms. Kimberlee Centera. We're sitting
7 about eight feet apart, and we will be using her
8 microphone.

9 THE VIDEOGRAPHER: Okay. The court
10 reporter will now swear in the witness.

11 KIMBERLEE CENTERA,
12 having been first duly sworn, deposes and says
13 in reply to the questions propounded as follows:

14 DIRECT EXAMINATION

15 BY MS. NAGLE:

16 Q Great. Okay. Good morning, Ms.
17 Centera. My name is Mary Kathryn Nagle, and I
18 will be asking you a few questions today. Just
19 just before we get started here, can you go
20 ahead and state your full name and spell it for
21 the court reporter, please?

22 A Kimberlee Centera, K-i-m-b-e-r-l-e-e,
23 C-e-n-t-e-r-a.

24 Q Thanks so much. And where are you
25 located today?

1 A I am located in San Diego, California.

2 Q Wonderful. And just so you know, I will
3 be asking lots of questions and showing you some
4 exhibits on the screen. Your counsel, who's
5 there in the room, may have some of these
6 documents, for instance, your report, in which
7 case, you know, if you want to look at it on the
8 screen or, you know, in print, I think either is
9 fine.

10 If I ask you a question that you don't
11 understand, please feel free to let me know. If
12 you need me to repeat a question, you can let me
13 know. Also, you know, any time you need to take
14 a break, we can take a break. You know, it's
15 really -- I want you to be comfortable, and I
16 don't want you to feel like we have to keep
17 going if we need a bathroom break at any point
18 in time.

19 So jumping right in here, have you given
20 a deposition before?

21 A I have.

22 Q And have you ever testified in court
23 before?

24 A No, I have not.

25 Q Do you recall, how many times have you

1 given a deposition? Do you know?

2 A One other time.

3 Q And do you recall the name of the case
4 or the litigation that was -- that you gave a
5 deposition in?

6 A I don't recall the name of the case. It
7 was with a prior employer several years ago, and
8 there was a case filed by one of the landowners
9 in connection with a project, and so they took
10 my deposition in connection with that.

11 Q And so in that instance, you -- were you
12 deposed as an expert, or was it --

13 A No.

14 Q Okay. Fact witness?

15 A Correct.

16 Q All right. Today do you have a
17 smartphone with you?

18 A I do, yes.

19 Q And where is the phone located?

20 A It's to the left of me. It's turned
21 over facedown on the table.

22 Q Okay. And are there any other
23 electronic devices that you have with you during
24 this deposition, other than the laptop you're
25 using?

1 A No.

2 Q And do you agree to not text or use any
3 other messaging system while we are recording
4 this deposition?

5 A I do.

6 Q Okay. And I understand that Sarah
7 Stevenson is in the room with you. Is there
8 anyone else in the room with you at this time?

9 A No, there's not.

10 Q And do you have any printed documents
11 with you this morning?

12 A I do.

13 Q And do you -- can you identify what
14 documents you do have with you?

15 A Sure. Is it -- is it okay if I just --
16 I tell you --

17 Q Sure. Absolutely.

18 A I have a printed copy of my report, and
19 then I have the sandy soil permits. I have the
20 John Pfahl reports, and I have a copy of the
21 interrogatories, a copy of the Tenth Circuit
22 opinion, and the -- not -- the FTI report. Not
23 the complete report with all the appendices, but
24 just the report itself without the appendices,
25 and then the Roadrunner Solar Pharoah surface

1 use agreement.

2 Q Okay. All right. And how many times
3 have you been retained as an expert witness in a
4 litigation?

5 A This is the first time.

6 Q Okay. Prior to this litigation, have
7 you ever been paid to form an opinion where
8 minerals were extracted in violation of federal
9 law?

10 MS. STEVENSON: Object to form.

11 THE WITNESS: Never.

12 Q (By Ms. Nagle) Have you, prior to this
13 litigation, ever been hired to form an opinion
14 where minerals were extracted from an Indian
15 trust property in violation of federal law?

16 MS. STEVENSON: Object to form.

17 THE WITNESS: Never.

18 Q (By Ms. Nagle) Have you ever been paid
19 to form an opinion related to 25 CFR Part 214?

20 A No.

21 Q Have you ever been paid to form an
22 opinion related to 25 CFR Part 211?

23 A No.

24 Q Have you ever been paid to form an
25 opinion related to the treaty rights of a

1 **federally recognized tribal nation?**

2 A And I'm sorry, Mary Kathryn. Could you
3 repeat that? What kind of rights?

4 Q Sure. Have you ever been paid to form
5 an opinion related to the treaty rights of a
6 federally recognized tribal nation?

7 A No.

8 Q Have you ever been paid to form an
9 opinion related to the Osage Allotment Act of
10 1906 or its amendments?

11 A No.

12 Q Prior to this litigation, have you ever
13 been paid to form an opinion regarding whether
14 to obtain a lease to mine from a federally
15 recognized tribal nation?

16 A No.

17 Q Prior to this litigation, have you ever
18 been paid to form an opinion regarding the
19 reasonableness of a decision to obtain a mining
20 lease where the United States instructed the
21 decision-maker to obtain a mining lease?

22 MS. STEVENSON: Object to form.

23 THE WITNESS: No.

24 Q (By Ms. Nagle) And just overall, what
25 did you do to prepare for your deposition today?

1 A I reviewed some of the materials that I
2 -- that I mentioned that I have here with me. I
3 -- to refresh my memory, I reviewed those
4 materials.

5 Q And did you meet with counsel to prepare
6 for today's deposition?

7 A I did.

8 Q And who did you meet with, specifically?

9 A Sarah Stevenson, Lynn Slade, and Ryan
10 Ray.

11 Q And did you meet -- did you discuss
12 today's deposition with anyone else besides
13 those three individuals?

14 A No, I did not.

15 Q Did you look at any documents to prepare
16 for today's deposition that you didn't look at
17 to prepare for your report?

18 A No.

19 Q Okay. And did you listen to the
20 deposition of Robert Freas in this litigation?

21 A I did not.

22 Q Okay. Did you read his reports?

23 A I did not.

24 Q Do you have an opinion with regards to
25 his report?

1 A I don't.

2 Q Okay. Did you listen to the deposition
3 of Steven J. Hazel in this litigation?

4 A I did.

5 Q And do you agree with his findings?

6 A I don't. No, I do not.

7 Q And why do you not agree with his
8 findings?

9 A I -- I don't agree with the basis on
10 which he does his valuation. He uses the
11 surface leases as the basis for determining the
12 compensation, and in my years of experience of
13 working in renewables, which is almost 30 years,
14 I've never seen any kind of compensation even
15 contemplated, so I -- I have no -- there's no
16 basis in reality, in terms of my experience, to
17 calculate compensation on that basis.

18 Q Just going over some of your general
19 experience in the field, I would love to hear a
20 little bit about this organization you work
21 with. What is Women in Renewables and
22 Sustainability?

23 A Women in Renewables and Sustainability
24 is an organization based in the Bay area that
25 promotes the advancement of women in -- you

1 know, generally in renewables, and just, you
2 know, sustainability at large, to try to
3 encourage women, you know, career paths,
4 education, that sort of thing.

5 Q And what is your role in the
6 organization?

7 A I am in an advisory role. I also have
8 presented to them on materials. I've spoken to
9 them on negotiations, so I've given them
10 presentations and on leadership and
11 negotiations.

12 Q Now, I'd like to turn to your expert
13 report in this litigation, which I am going to
14 see if I can figure out how to share my screen
15 so that -- let's see here. Okay. So now we
16 should all be seeing this. This is -- do you
17 recognize this as your expert report?

18 A I -- I do, yes.

19 Q Great. So I will mark this as
20 deposition Exhibit Number 35.

21 MS. NAGLE: I believe we're at Number
22 35, but someone correct me if I'm wrong.

23 Q (By Ms. Nagle) So this'll be marked as
24 Exhibit 35, and if we could turn to Appendix B
25 -- let me see if -- still -- here we go.

1 Appendix B, great. So I'm going to turn our
2 attention to Appendix B and, specifically, your
3 CV in here.

4 And if you look at this, does Appendix B
5 accurately reflect your background and
6 qualifications?

7 A Can you scroll down a little bit more?
8 It --

9 Q Sure. Absolutely.

10 A If it's the one that was in my report,
11 then it should, yes. Yes.

12 Q I can keep scrolling down.

13 A Thank you. That appears to be correct.

14 Q Okay. Great. Are you currently a
15 California licensed real estate broker?

16 A I am.

17 Q And have you received any training
18 regarding Indian trust properties as a condition
19 of obtaining or maintaining your license?

20 A No, I have not.

21 Q And are you the president and founder of
22 TerraPro Solutions?

23 A I am.

24 Q How long have you been in your current
25 position?

1 A Since about 2012. Since 2012 I started
2 my consulting business. The official company,
3 TerraPro Solutions, has been in existence for
4 about four years, three years, four years. We
5 changed the name of the company a few years ago.

6 **Q And what was the name of the company**
7 **before the name change?**

8 A Before the name change, it was Centera
9 Land and Title and about, I want to say, three
10 years ago, we changed it to TerraPro Solutions.

11 **Q Okay. Thank you. And how long have you**
12 **been in your current position?**

13 A I basically founded the company in 2012.

14 **Q Okay. And what are your job**
15 **responsibilities?**

16 A I manage the company. I, you know, run
17 the company and work with, you know, different
18 people, and I have several people who work for
19 me. And basically, I'm the -- you know, the
20 risk expert, if you will, so I work on a lot of
21 different projects and consult on different
22 projects for developers in the utility scale
23 space for energy.

24 **Q Uh-huh. And when you state that you**
25 **work in risk, can you help explain a little bit**

1 more what risk entails?

2 A Well, we're -- our company is -- we're
3 finance experts, so we help our clients prepare
4 for financing on renewable energy projects, so
5 for debt financing in connection with
6 construction, or it could be tax equity
7 financing. And so we will go in and take a look
8 at the documentation, so we'll look at leases,
9 we'll look at title reports.

10 We will -- we have a lot of reports that
11 we prepare for our clients to help them
12 understand the different risk profile for a
13 project. So what that would mean is different
14 issues that might be raised by counsel in
15 connection with the financing.

16 And because we have a lot of financing
17 experience and that's what we specialize in, we
18 have a good understanding of the kinds of things
19 that attorneys are going to focus on for
20 purposes of due diligence. So we help our
21 clients understand what those issues are, and
22 then we help them work out a strategy to solve
23 them.

24 Q And would some of the issues that
25 you-all would look at in doing this due

1 diligence, would some of those issues relate to
2 potential leases that would need to be obtained
3 from the government?

4 A It could, yes.

5 Q In your experience, have you ever
6 advised a client on whether or not to obtain a
7 lease from a tribal nation?

8 A Just generally? Yes.

9 Q And can you -- can you identify which
10 tribal nations you have advised in relation to?

11 A I can't tell you a specific tribe, but,
12 I mean, you know, one of the things that we do
13 is get involved in early stage development.
14 Early stage development includes site control,
15 so if we are working with clients to identify
16 the ownership of a particular site, and that
17 would include a tribe, then we would absolutely
18 be working with them on that lease, potentially,
19 and negotiating that lease. So we would get
20 involved, absolutely.

21 Q Do you -- do you have any recollection
22 of an instance in which you advised on the
23 ownership of a particular site where a tribal
24 nation owned the mineral estate itself?

25 A And I'm sorry. With regard to a lease,

1 are you saying?

2 Q Sure. Or, you know, doesn't have to
3 necessarily be a lease, but you mentioned
4 advising on the ownership of a particular site,
5 and I'm just wondering if you recollect whether
6 you've ever worked or advised on an instance
7 where a tribal nation did own the mineral estate
8 at a particular site?

9 A Yes, yes.

10 Q Can you name those specific examples?

11 A Not without looking at material. You
12 know, we work on so many different projects that
13 I can't tell you a specific project at this
14 moment.

15 Q Okay. Do you recall whether -- in those
16 instances where the tribal nation owned the
17 mineral estate, do you recall whether your
18 advice was to get a lease from the tribal nation
19 before mining or whether you advised to not get
20 a lease from the tribal nation before mining?
21 Do you recall?

22 MS. STEVENSON: Form.

23 THE WITNESS: Well, yeah, I think if
24 you're talking about mining, you're talking
25 about something different; right? Because

1 normally in our work, we're not entering into
2 mining leases. That doesn't come up. Whether
3 it's tribes or in any kind of a severance
4 situation, we're not entering into leases.

5 We might enter into accommodation
6 agreements or surface use agreements, those
7 types of things, but I've not ever seen a lease
8 negotiated for purposes of mining, when it comes
9 to tribal or otherwise.

10 Q (By Ms. Nagle) So in your personal work
11 and professional work experience, you do not
12 have experience negotiating a mining lease with
13 a tribal nation; is that correct?

14 A That's correct.

15 Q And before working and before founding
16 TerraPro Solutions, were you at AES Corporation?

17 A Yes, I was.

18 Q And how long were you there?

19 A I was at AES Corporation from 2005 until
20 2012.

21 Q And what were your job responsibilities
22 during your time there?

23 A I was vice president of real estate, and
24 I ran the real estate division of the company
25 and managed a team of people. And it was our

1 responsibility to acquire so -- establish site
2 control for all of our sites across the United
3 States and, in some cases, I did a little bit of
4 work in South America. But I'm predominantly in
5 the U.S., and we were responsible for all of the
6 acquisition of all the sites and all --
7 responsible for all the financings and all the
8 management of all the real estate and title
9 rights associated with the projects.

10 Q And were most of those projects related
11 to wind power, or were there other forms of
12 renewables that you worked on as well?

13 A Other forms of renewables.

14 Q In addition to wind power, what else do
15 you have experience in?

16 A The solar. We worked in solar as well,
17 solar development.

18 Q And before AES were you at SeaWest
19 WindPower Corporation?

20 A I was, yes.

21 Q And how long were you there?

22 A I started there in about 1993, and
23 SeaWest WindPower was acquired by AES
24 Corporation in 2005, so until 2005 when we were
25 acquired by AES.

1 Q And what were your job responsibilities
2 at SeaWest WindPower?

3 A At SeaWest WindPower, I had a similar
4 position. I was responsible for all of the real
5 estate acquisitions and title. We did all the
6 site control, site identification, and then all
7 of the financing work around the -- for the
8 projects, and predominantly all wind. It was
9 all wind with SeaWest WindPower.

10 Q And before that, you were at Jennings,
11 Engstrand & Henrikson; is that correct?

12 A Yes.

13 Q And how long were you there?

14 A I want to say four or five years,
15 something like that.

16 Q Okay. And what were your job
17 responsibilities there?

18 A I was a paralegal. I worked for one of
19 the partners in the real estate trusts, estate
20 planning, wills, and probate.

21 Q Okay. And I'm going to turn to Page 2
22 of your CV and draw your attention to this line
23 here, where it states that you have specialized
24 expertise negotiating with public and private
25 entities and utilities including -- and you list

1 several. And I see here that BIA is listed; is
2 that correct?

3 A Right.

4 Q Does BIA stand for Bureau of Indian
5 Affairs?

6 A It does, yes.

7 Q Could you please describe for us what
8 special expertise you have in negotiating with
9 BIA?

10 A I worked on a project in -- it wasn't --
11 it was in the midwest. I don't remember exactly
12 where it was, but we worked on negotiations of a
13 lease with the -- with the BIA. It was very
14 early stage. A lot of our work is early stage,
15 and so I was involved in those initial
16 negotiations with the BIA.

17 The client at the time ended up, for
18 different reasons, abandoning the project; there
19 were other things that -- that happened, so we
20 did not complete those negotiations, so the
21 leases weren't all entered into. But I was
22 involved in the formulating of the lease and
23 some of the back-and-forth negotiations,
24 initially, with the BIA.

25 Q Now, those leases that you were

1 negotiating, I realize they didn't come to
2 fruition, but were they mineral leases?

3 A They were not. No, they were for site
4 control, so they would have been for the
5 development of the -- of the wind project.

6 Q And do you remember, roughly, what year
7 those negotiations would have been taking place?

8 A I'm going to guess and say maybe 2013.

9 Q Okay. Do you remember the names of any
10 individuals that you worked with at BIA or spoke
11 with?

12 A I don't. You know, at any given time,
13 our -- we -- you know, we have one client where
14 we worked on 39 projects in one year, so it's
15 hard for me to recollect specific names and that
16 type of thing.

17 Q Sure. I can definitely understand that.
18 Let's see. So let's -- I'm going to keep moving
19 on here, and let's see if I can find it on here.
20 Yeah, okay, so it looks like we have here,
21 listed in your Appendix B, a large number, a
22 very extensive list of different projects that
23 you've had involvement with. And so I'm showing
24 you this here on the screen, but do you agree
25 that this is the correct listing of the projects

1 you've been involved in?

2 A It looks to be correct, yes.

3 Q Okay. And I apologize; I can't hand a
4 hard copy to you, but I think you have one there
5 in the room with you, so, hopefully, you can
6 refer to that as much as you need as well. Out
7 of all of these projects, do you know how many
8 were bifurcated where the mineral and surface
9 estates were separate and actually the surface
10 estate was subservient to the mineral estate?

11 A You know what? I'd have to go back and
12 look at them. I can't tell you a percentage.

13 Q That's fine. So you're not -- you're
14 not sure one way or the other without looking
15 further just how many of these had a bifurcated
16 -- okay. Do you know how many of these
17 projects, if any of them, would have involved
18 the valuation of minerals?

19 A The valuation of minerals with respect
20 -- like, what do you mean, the valuation of
21 minerals?

22 Q Well, so I understand that your expert
23 report, and please correct me if I'm wrong, is
24 taking issue with Mr. Hazel's report in saying
25 that his valuation of the minerals of the lease

1 in this litigation, that the Tenth Circuit
2 stated defendants are required to obtain, is
3 unreasonable. And maybe we just -- maybe we
4 just take a step back and ask, in your expert
5 opinion, what would be a reasonable valuation
6 for the minerals that defendants have taken from
7 the Osage Minerals Council in this case?

8 MS. STEVENSON: Object to form.

9 THE WITNESS: Yeah, I think what we're
10 -- what we're talking about is the compensation;
11 right? So I'm not sure that we're talking about
12 the valuation of the minerals, per se, but I
13 think what we're talking about is a
14 compensation; right? So that is what I have
15 more familiarity with, in terms of the
16 compensation that would be negotiated between
17 the parties.

18 So it's not really necessarily based
19 upon the valuation of the minerals, exactly.
20 You know, we're not going to go out and try to
21 evaluate, you know, how many minerals are out
22 there and what they're worth. It really
23 pertains more to the -- to the use.

24 So, you know, I work on solar versus
25 wind, and so a lot of this is negotiated around

1 what is the extent of the availability of the
2 property. But -- so I'm kind of confused by the
3 question as to the valuation of the minerals,
4 just because I don't try to value the minerals,
5 per se.

6 Q (By Ms. Nagle) Okay. And so -- so in
7 your expert opinion, compensation for minerals
8 taken is not equivalent to the actual market
9 value of the minerals themselves; is that
10 correct?

11 MS. STEVENSON: Object to form.

12 THE WITNESS: No, not necessarily. In
13 other words, if you think about some of these
14 permits that's -- where you value the minerals
15 so much per ton that's extracted and all of
16 that, we really don't have those kinds of
17 conversations. What we -- what we really talk
18 about is, you know, what is the use going to be,
19 what is the availability.

20 We will look at the -- you know,
21 sometimes at what the minerals are, if you have
22 oil and gas, for instance, and you can do slant
23 drilling. And so it depends on the makeup of
24 the minerals, but I don't have someone go out
25 and try to look at the totality of the estate

1 and say, you know, the mineral estate is worth
2 this much, so, you know, we're going to make
3 payments on that basis. It's more of a
4 negotiation that happens as a result of several
5 different factors.

6 And in a lot of cases, there's -- you
7 know, the compensation can be reciprocal rights.
8 For instance, we do a lot of work where, you
9 know, the wind farms have to build a lot of
10 roads. And so if you're going to, you know,
11 come in and try to explore the minerals, there's
12 a benefit there of not having to build that
13 road, for instance. I mean, some of these roads
14 are very expensive.

15 And so we might work out an arrangement
16 where, you know, there's no direct compensation
17 paid, but the parties will have a reciprocal
18 right for road use. So a lot of times, it's the
19 function of a negotiation, and there's --
20 there's value around certain things that -- so
21 it's not really on the basis of the minerals,
22 per se, if that makes sense.

23 Q (By Ms. Nagle) I think that -- I think
24 that makes sense. And so if I take out the word
25 "valuation" and replace it with "compensation,"

1 out of all these projects, did any of them
2 involve you or your team undertaking to estimate
3 how much the compensation from minerals would
4 be?

5 A So there -- we would -- we would work
6 out a negotiation on the compensation to be paid
7 between the parties, yes, yes, if that's what
8 you're asking.

9 Q And then in those instances where you
10 were involved in such a negotiation, would that
11 negotiation take place before the minerals were
12 mined or after the minerals are mined?

13 MS. STEVENSON: Object to form.

14 THE WITNESS: Yeah, I -- you know, we
15 don't get involved in the mining of the
16 minerals, so, you know, that's going to be
17 something completely separate; right?

18 Q (By Ms. Nagle) Uh-huh.

19 A You know, I think we're not negotiating
20 mining agreements; right? That's renewables.
21 We're not in the business of mining; that's not
22 what we do, so we're not going to put that on
23 the table. Like I said, the kinds of things
24 that would be involved in our negotiation would
25 be the kinds of things that -- actual things

1 that we can provide, like, you know, roads, you
2 know, the ability to be able to -- if there's
3 some reciprocity as far as uses and that kind of
4 thing.

5 I mean, we -- you know, I work a lot on
6 solar versus wind. With solar and the spacing
7 of the turbines, you know, typically, I -- you
8 know, there's no restriction on other uses.
9 That's always been a big benefit of negotiating
10 wind power. And I've been doing this a very
11 long time across all different kinds of
12 properties, so, you know, mining doesn't really
13 come up. It's not what we do, it's not in our
14 area of expertise.

15 Q Did any of these projects in Appendix B
16 involve mining?

17 A No, no, none of them involved mining.

18 Q Did any of them involve a tribal nation?

19 A Some of them could. I would have to go
20 back and look at that to be able to tell you
21 which ones exactly. Again, I work on a lot of
22 projects, and I -- I don't keep them all in my
23 head. There's no way I can do that.

24 Q Sure. But you don't recall right now
25 any specific project listed here in Appendix B

1 that involves a tribal nation; is that correct?

2 A Correct.

3 Q And do you recall any project listed
4 here in Appendix B where the United States
5 served as trustee?

6 A Served as trustee of the -- in what
7 capacity?

8 Q Well, in capacity -- in the capacity as
9 the trustee for Indian trust property.

10 THE REPORTER: For what? Indian?

11 MS. NAGLE: Indian trust property.

12 THE WITNESS: Where the United States --
13 you know, I can't really say that I have. I
14 think in most cases, if we're working with
15 tribal land, we're either working with the tribe
16 directly or we're interfacing with the BIA. So
17 I can't really say that we had a lot of
18 interface with, you know, the USA as a trustee,
19 no, I cannot say that.

20 Q (By Ms. Nagle) Did any of these
21 projects here listed in Appendix B involve a
22 trespass?

23 A No.

24 Q And in any of these projects listed here
25 in Appendix B, was the client that you worked on

1 **behalf advised by the United States to halt**
2 **construction pending permit approval?**

3 MS. STEVENSON: Object to form.

4 THE WITNESS: No.

5 **Q (By Ms. Nagle) Were you in -- when you**
6 **prepared your report for this case, were you**
7 **informed that defendants had violated federal**
8 **law and committed a trespass on the Osage**
9 **mineral estate?**

10 MS. STEVENSON: Object to form.

11 THE WITNESS: I don't know that I
12 understand that question. I wasn't really
13 looking at the trespass. You know, I was asked
14 to look at the FTI report, and really our focus
15 was the methodology that was used in connection
16 with that, you know, proposed compensation. So
17 I can't say that we looked at that at all, no.

18 **Q (By Ms. Nagle) Did you -- you said you**
19 **read or you reviewed the Tenth Circuit's**
20 **decision in this case; is that correct?**

21 A Certain portions of it, yes, that
22 pertained to my work, yes.

23 **Q Did you read the entire Tenth Circuit**
24 **decision?**

25 A I can't say that I did, no. I think

1 there were certain pages that I really focused
2 on that spoke to the definition of mining and
3 that kind of thing, so that's really what I
4 focused on.

5 **Q For the sections of the decision, you**
6 **focused on sections that the attorneys directed**
7 **you to focus on, or did you decide yourself**
8 **which sections to focus on?**

9 MS. STEVENSON: Object to form, and
10 object to the extent it seeks privileged
11 information.

12 You can --

13 THE WITNESS: What does -- the attorney
14 suggested there at the beginning, where there's
15 all the legalese -- you know, they suggested
16 that I don't necessarily have to read all of
17 that, so, you know, I didn't, because it didn't
18 really have bearing on my report.

19 **Q (By Ms. Nagle) What -- and in your**
20 **expert opinion, what part of the Tenth Circuit**
21 **opinion did have bearing on your report?**

22 A Do you want me to tell you the pages?

23 **Q Sure.**

24 A I think I marked them so I could tell
25 you. I apologize. Just a moment here.

1 **Q No, take your time.**

2 A Let's see. I want to say it was Page
3 18. Page 18 through Page -- I guess it's
4 through the signatures so --

5 **Q Okay.**

6 A Well, pardon me. Hang on just a second.
7 Page 18 through, really, Page 27 is what I
8 looked at.

9 **Q So would that basically be 18 through**
10 **the end of the opinion?**

11 A Yes. Well, let's see. What's -- it
12 was, yeah, through Page 27, correct.

13 **Q And based on what you read of the Tenth**
14 **Circuit's decision, what is your understanding**
15 **of what the Tenth Circuit concluded or decided**
16 **in this case?**

17 A Well, I'm not an attorney, but they
18 decided that the fact that there was the
19 crushing of the -- of the limestone, that -- and
20 I guess there was, you know, really kind of an
21 ambiguity. But they decided in favor of the
22 tribe with regard to the crushing of the
23 limestone, that that constituted mining, and
24 that there should have been a lease obtained for
25 that purpose.

1 Q Okay. And how -- how did your
2 understanding of what the Tenth Circuit decided
3 inform your expert opinion?

4 A Besides the fact that I was shocked,
5 honestly? Shocked and surprised, to be
6 perfectly honest, because, you know, I have
7 many, many years of doing this work, and I've
8 seen a lot of, you know, turbine foundations and
9 that kind of thing. So I think I was just
10 surprised by the finding of the court that --
11 you know, so, you know, I -- that isn't
12 something that I would have anticipated, so I
13 was surprised by the finding.

14 Q So your shock and surprise at the Tenth
15 Circuit's finding impacted your expert report in
16 this case; is that correct?

17 A No. I think what I'm saying is that I
18 was just surprised at their finding. You know,
19 I -- you know, I've worked on a lot of
20 construction for a lot of projects, and I never
21 would have imagined that, you know, they would
22 have made the conclusion that they did, that,
23 you know, taking that limestone, you know,
24 crushing it and repurposing -- I guess in my
25 mind when I think about mining, I think about

1 removing minerals from a site and taking them
2 off the site and selling them for some purpose.
3 And with my experience in renewables, I know
4 that that's not happening, so I think that's
5 what was, you know, different. That was what
6 was the surprise.

7 Q Uh-huh, uh-huh. Okay. Let's see here.
8 Are all of the expert opinions that you have
9 formed in this case represented in your expert
10 report?

11 A Pertaining to this matter, yes, yes.

12 Q Have you been asked to do any additional
13 work or form any additional opinion since
14 rendering your expert report in October?

15 A With regard to this case, no, no.

16 Q Okay. Is there anything in your report
17 that you need to update, supplement, or correct?

18 A Not that I'm aware of at this point, no.

19 Q Excuse me. And I can pull it back up on
20 the screen. Let me just do that really quick
21 here. We've got -- okay. Let me share my
22 screen. So we're looking here at your expert
23 report, and if I go up to Appendix A, which
24 lists the documents that you relied on in
25 rendering your expert report -- we've got here

1 Appendix A, and this is Exhibit 35 that we're
2 looking at right now. Can you verify that
3 Appendix A is a complete list of the documents
4 you relied on in preparing your report?

5 MS. STEVENSON: Object to form.

6 THE WITNESS: Could you -- I'm sorry.
7 Could you scroll down through the rest of the --

8 Q (By Ms. Nagle) Sure. Yeah, absolutely.

9 A That looks to be accurate, yes. Thank
10 you.

11 Q Okay. Other than the documents listed
12 in Appendix A, were you provided with any other
13 facts that you considered in forming your
14 opinion?

15 A No, I was not.

16 Q Were there -- did counsel provide you
17 any facts or data that you considered in forming
18 your opinion?

19 A Any facts or data, no, no, huh-uh.

20 Q Were there any assumptions that counsel
21 provided to you that you considered in forming
22 your opinions in this report?

23 A No.

24 Q And are there any documents that you
25 asked for but did not receive?

1 A I don't believe so, no, huh-uh.

2 Q Okay. Did you review any federal
3 regulations in preparing your report?

4 A No, no, I did not, other than whatever
5 is in this report, no.

6 Q Okay. So did you review 25 CFR Part 214
7 in preparing your report?

8 A Not really in preparing my report, no.

9 Q Okay. Okay. Let me just stop this one.
10 Did you review 25 CFR Part 211 in
11 preparing your report?

12 A No, I didn't.

13 Q Did you review the Osage Allotment Act
14 of 1906 and its amendments in preparing your
15 report?

16 A I did not, no.

17 Q Okay. Actually, I'm going to go back to
18 your report again. My apologies. I just hate
19 leaving it on screen share when we're not there.
20 But it looks like, if we look at Page 4 of your
21 report, you discuss the Roadrunner solar project
22 here. And so do you see that? Is that -- does
23 that look like a correct rendition of your
24 report here on Page 4?

25 A Yes, yes, it does.

1 Q And you received documents related to
2 the Roadrunner solar project; is that correct?

3 A Yes.

4 Q Okay. And did Roadrunner Solar involve
5 the sovereignty of a tribal nation?

6 A I don't believe that it did, no.

7 Q Okay. Did the documents you reviewed
8 for Roadrunner solar involve a congressional
9 statute mandating that the mineral estate be
10 administered in the best interests of the owner
11 of the mineral estate?

12 A Not that I'm aware of, no.

13 Q Did Roadrunner Solar, or any other
14 project for which you received documents,
15 involve the United States' duties or obligations
16 as trustee over an Indian trust asset?

17 A Not that I'm aware of, no.

18 Q And at the time that you conducted your
19 analysis for your expert report, were you aware
20 that in Osage County, the surface estates are
21 subservient to the Osage mineral estate?

22 A You know, I'm not an attorney, but I
23 know from title review. So if we looked at the
24 title, if there's a severance of the estate. So
25 I'm not aware of, you know, the details around

1 Osage County, per se, but just in this
2 particular case, that there's a severance of the
3 estate. I am aware of that.

4 **Q And how did your understanding of the**
5 **severance of the estate factor into your**
6 **opinion?**

7 A Well, I think it factors into all of our
8 work. I mean, you know, we specialize in title
9 work, and we specialize in what we call curative
10 work. So curative work is a resolution of any
11 issues that are going to come up in connection
12 with finance. And so from the standpoint of a
13 severance, you know, that's one of the first
14 things that we look at whenever we do title
15 review.

16 Whether it's a wind project or a solar
17 project, we're always going to make sure that we
18 understand if there is a severance. So, you
19 know, we're not so much focused on the
20 subservient or that type of thing; we're more
21 focused on the severance, what's constituted in
22 that, what -- you know, what could be out there
23 in terms of potential issues and that sort of
24 thing. So if that makes sense, that's really
25 more of our perspective.

1 Q Typically, in your work experience, when
2 there is that bifurcation and that severance of
3 the -- of the surface and the mineral estate,
4 what kind of issues could arise in your line of
5 work?

6 A Well, there can be a -- you know, a
7 conflict of the parties -- right? -- in terms --
8 in terms of use. And I think it's -- you know,
9 the other issue that arises for us is, our
10 clients want to make sure that they can get ALTA
11 35 coverage, which is mineral coverage. And so
12 if we see a severance, initially, we know that
13 there's going to have to be some kind of
14 discussion with some of the parties to make sure
15 and find out what the parameters are going to be
16 in order to be able to get that coverage.

17 So it really depends on the particular
18 -- the particulars of the situation. We're
19 going to look at a lot of different parameters,
20 you know, understand the parties, and understand
21 what -- you know, is there any, you know, our --
22 is there any minerals out there. Sometimes, you
23 know, you have a severance, but there's -- you
24 know, there's not really a mineral estate that's
25 -- you know, has any real value, per se, in

1 terms of exploration.

2 So from our -- I guess from our
3 standpoint, we're not really looking at it from
4 a legal standpoint so much as a business risk
5 standpoint and what factors might need to be
6 addressed and negotiated.

7 Q Uh-huh. And so from a business risk
8 standpoint, what would be a red flag that
9 perhaps something needs to be negotiated in a
10 situation where the surface estate is
11 subservient to the mineral estate?

12 A I think any time you have a severance,
13 you know, you're going to want to look at that
14 really closely. You're going to want to
15 understand who the parties are, you're going to
16 want to understand what the potential estate
17 could be, what the use is going to be. Is it
18 going to be wind versus solar? You want to look
19 at the adjoining land.

20 There's a lot of things that can be
21 taken into account in terms of a design, in
22 terms of location of improvements. So I think
23 just from a -- from a high level, you're going
24 to want to understand all the different pieces.

25 Q Uh-huh.

1 A Who the parties are, you know, that type
2 of thing.

3 Q Okay. So, now, I understand that your
4 report discusses, quote, reasonable standards
5 and customs within the renewable energy market;
6 is that correct?

7 A Yes, that sounds correct.

8 Q And what is your definition of
9 "reasonable standards and customs"? How would
10 you define that?

11 A I think it would be based upon a
12 precedent of my experience, having worked on
13 many financings, many projects across the United
14 States, and working with the attorneys, working
15 with the title companies, Alta surveyors, all
16 the different pieces and issues that they're
17 going to look at.

18 Q And in your expert opinion, Mr. Hazel,
19 in his report, does not rely on reasonable
20 standards or customs; is that correct in your
21 opinion?

22 A That's correct, yes.

23 Q In your expert opinion, what would be a
24 reasonable standard here to rely on to determine
25 what amount defendants are owed to pay for the

1 lease the Tenth Circuit has stated they must
2 acquire?

3 THE REPORTER: I'm sorry. Can you
4 repeat the last part of that?

5 MS. NAGLE: Sure. Let's see.

6 Q (By Ms. Nagle) In your expert opinion,
7 what standards would you employ to decide what
8 amount of money defendants must pay to the Osage
9 Minerals Council for the -- for the lease that
10 the Tenth Circuit has stated they're required to
11 obtain?

12 A I think what I would expect is that it
13 would be based on -- on the market conditions,
14 and I think, from what I can understand about
15 Osage County, there's a lot of information out
16 there on limestone being sold. There's a --
17 there's a quarry that's very close to this
18 project site.

19 So I think that would be my expectation,
20 is that the compensation would be based upon
21 what's typically paid. I think the problem or
22 part of the disconnect that I have that I still,
23 honestly, am struggling with here is, again, you
24 know, my idea of mining is -- in my experience,
25 if I'm working with a client on mining is that

1 there's an extraction that's taking place, it's
2 being taken off site, it's being sold. And none
3 of that, you know, we know has happened here.

4 But irregardless of that, I think if you
5 were to agree that there needs to be a lease and
6 that there needs to be compensation, then I
7 think I would expect that it would be based on
8 those market conditions.

9 So, you know, I think we have some
10 permits and those kinds of things where there's
11 some kind of a, you know, payment that's made
12 upon execution of the agreement. It looks like
13 there's a -- there's some kind of a payment
14 that's made during kind of the development or
15 assessment period, and then there's some kind of
16 percentage that's applied to that.

17 **Q So in your opinion, did the Tenth**
18 **Circuit get it wrong here? Do you disagree with**
19 **the Tenth Circuit that mining took place?**

20 **A** Well, I'm not -- I'm not here to
21 disagree with the courts; right? That's --
22 that's -- I mean, I think they've ruled what
23 they've ruled; right? I'm just talking about my
24 experience, what you asked me about, you know,
25 what's reasonable and customary for me. So I

1 think with that in mind, that I -- if I'm
2 looking at the compensation -- I don't think the
3 courts really opined on the compensation; I
4 think they really just said there's mining
5 that's taken place. So I -- that's really all I
6 can say about that.

7 Q So in your expert opinion, did the Tenth
8 Circuit get it right when it said that mining
9 took place in this litigation?

10 A I think they took a very liberal view.
11 I think they say in their opinion that where
12 there's an ambiguity, they need to rule in favor
13 of the tribe, and it seems to me like that's
14 what they've done here. Certainly, you know,
15 there's a lot of history, there's obviously a
16 lot of legacy, you know, and working with the
17 tribes is very delicate.

18 And so I think, you know, there's a --
19 there's a lot of factors here, probably beyond
20 just the mining, but, yeah, you know, I'm not
21 really -- the courts ruled as they did, so I'm
22 not here to dispute that, per se, because I
23 think we are where we are.

24 Q In your expert opinion, does the Tenth
25 Circuit's decision fit within the reasonable

1 standards and customs framework that you use in
2 your expert report?

3 A Well, all I can say is, you know, I have
4 a lot of experience working on construction and
5 construction of projects where foundations and
6 materials are brought in, or what have you. And
7 I -- their -- their finding in this case, it
8 just seems to me, you know, really outside the
9 box. I wouldn't have expected that. If I was
10 sitting in the developer's seat, I would not
11 have anticipated that, no way.

12 Q Do you have an understanding of why in
13 1906 Congress assigned the mineral rights to the
14 Osage Nation?

15 MS. STEVENSON: Object to form.

16 THE WITNESS: No, I don't know.

17 Q (By Ms. Nagle) Do you -- in your report
18 when you mention this reasonable standard --
19 this reasonableness standard -- excuse me --
20 does that reasonableness standard take into
21 account whether or not those parties, the seller
22 and the buyer, are willing to participate in the
23 negotiation?

24 A I think so, yes. You know, there is --
25 there's always going to be factors. Renewable

1 projects are very difficult to develop. I work
2 in all jurisdictions. It's not easy anywhere.
3 It's always a challenge, and there's always
4 issues that come up, but there's a -- there's a
5 conversation that, you know, has to take place.
6 So...

7 Q Is the calculation of what is reasonable
8 affected by the fact that there is an illegal
9 trespass?

10 MS. STEVENSON: Object to form.

11 THE WITNESS: The trespass wasn't a
12 factor for me. I'm not sure -- no, I didn't
13 consider that, no.

14 Q (By Ms. Nagle) Does the reasonableness
15 standard differ depending on the type of
16 renewable energy you're working on, you're
17 working with?

18 A Well, as I mentioned, you know, every
19 project is different. You know, every project
20 has its own set of parameters, but, generally
21 speaking, in my experience, there's -- there's
22 normally -- there's a common ground that can be
23 met. You know, I've worked on a lot of
24 different cases. I worked on a case where the
25 agreement was access rights. We had a tribe

1 that, you know, they wanted to be able to hold
2 their vision quests.

3 And so one of the conditions of the
4 project was to -- for each of the landowners to
5 grant these rights across the access road so
6 that the tribe could be able to access this area
7 that was sacred for them, to be able to hold
8 their specific vision quests. And so that was
9 done; those easements were negotiated.

10 So I think it depends on a lot of
11 different parameters, but I think certainly
12 there's -- you know, again, there's kind of a
13 reciprocal nature that, normally there's a
14 common ground that can be found on these
15 projects, that, I think, does help to repin
16 (phonetic) the reasonableness of the -- of the
17 compensation.

18 **Q In your expert opinion, is there a**
19 **common ground here to be found between the Osage**
20 **Minerals Council and defendants?**

21 A You know, I don't know, because I didn't
22 work on this case, so I don't -- I don't know.
23 I can't really speak to that.

24 **Q Okay. Does your reasonableness standard**
25 **account for a trust relationship between the**

1 United States and a federally recognized tribal
2 nation?

3 A No, I don't really take that into
4 account, per se, no, huh-uh.

5 Q Does your reasonableness standard
6 account for the sovereignty of a tribal nation?

7 A I think absolutely, because, as I say, I
8 -- you know, there's a lot of different
9 solutions that have been reached on other
10 projects. So I would say yes. You know,
11 there's not a one size fits all. There's a lot
12 of different ways that things can be negotiated.

13 Q Uh-huh.

14 A By "things," I mean compensation, if you
15 want to classify it as compensation. It's not
16 always, you know, a payment of money. There may
17 be other things that are of value that can be
18 exchanged.

19 Q Uh-huh. Is it your understanding that
20 the Osage Minerals Council had the sovereign
21 right to say no to the mining that took place on
22 the Osage mineral estate in this case?

23 A I believe I did hear that, yes.

24 Q And did that factor -- that legal
25 reality factor into your expert opinion in any

1 **shape or form?**

2 A In terms of the reasonableness, you
3 know, I -- you know, I think we're still talking
4 about what would be reasonable compensation. I
5 think you're talking about something else;
6 right? What their -- what their view might be
7 of the project or moving forward, I think that's
8 a different conversation; right?

9 Q In your expert opinion, what would be a
10 **reasonable compensation if the Osage Minerals**
11 **Council said, no, we're not -- we're not**
12 **granting a lease, you do not have permission to**
13 **mine on the Osage mineral estate?**

14 A I would have to sit down and think about
15 that. I can't necessarily tell you that right
16 off the top of my head. Again, I didn't work on
17 all the development of this project and didn't
18 have conversations with the parties, so it would
19 be hard for me to say.

20 Q In rendering your expert opinion in this
21 **case, did you review any documentation or**
22 **evidence that indicated to you that the Osage**
23 **Minerals Council would have been willing to**
24 **grant defendants a lease to mine the Osage**
25 **mineral estate?**

1 A Well, I would only say, just speaking
2 from the standpoint of a -- as a negotiator, I
3 think there was an early letter about some
4 collaboration and some exchange and, you know,
5 making sure that they had all the information on
6 the project. So I'm an eternal optimist; I
7 always feel that there's an opportunity for
8 parties to work out something.

9 There's -- in very rare cases, do --
10 maybe we have to walk away, but, typically, you
11 know, if people can sit down and really have a
12 conversation, there's some common ground that
13 can be reached.

14 Q So would you say that your expert report
15 relies on the assumption that the parties would
16 have eventually worked it out and negotiated a
17 lease; is that correct?

18 A Well, I would have to say that early on
19 -- you know, I don't think we knew in the
20 beginning that a lease was going to be required;
21 right? I mean, I think this decision came very
22 much later. I think it came even as the project
23 was in construction. So I think if we're going
24 to back up and go to the very early part of this
25 project when the -- when the -- when the

1 negotiations took place, I don't know that it
2 would have been a lease -- right? -- because I
3 don't know that, you know, even the -- even the
4 Osage and the tribe didn't really put forward
5 the fact that there has to be a lease.

6 I don't think that -- I don't -- I
7 didn't see that in early -- any of that early
8 correspondence where it was specifically said,
9 you know, give us a lease. So I can't say that
10 that negotiation would have taken place. I
11 think, again, a lot of our work is in the early
12 stages, so I think if we back this up to, I
13 don't know, 2010 or 2011, maybe -- again, I
14 didn't work on this project, but in the very
15 early stages, I think that's where those, you
16 know, negotiations would have taken place.

17 Q So -- so just to be clear, your -- in
18 rendering your expert opinion in this case, you
19 assumed that the Osage Minerals Council did not
20 communicate to defendants that they needed to
21 get a lease in this case early on; is that
22 correct?

23 A In my -- in my expert opinion, I'm
24 commenting on the FTI report -- right? -- and
25 the calculation of the compensation. So that's

1 -- that's what I am commenting on there, and the
2 basis for that, and whether or not that's, you
3 know, reasonable within the industry.

4 You know, as far as the lease and all
5 that, I think we're there now; right? We
6 weren't there a long time ago, but I think
7 that's a -- that's a different -- that's a
8 different point than what we're talking about.
9 And I'm -- you know, at this point, I'm just
10 commenting on what I think is the reasonable --
11 based upon my industry experience of what I
12 would expect to see in terms of compensation
13 that would be paid, and it's not on the basis of
14 what's in the FTI report.

15 **Q Yeah, I understand that. I guess I'm**
16 **trying to understand what you mean when you**
17 **refer to the fact that, we didn't know that a**
18 **lease was required before construction. And so**
19 **can you help me understand the time frames that**
20 **you're using when -- what is your understanding**
21 **of when construction commenced on the project?**

22 **A I believe, and I think I say in my**
23 **report, it would -- you know, construction of**
24 **the actual foundations maybe took three or four**
25 **months or something of that case in 2014. So I**

1 -- my -- and, again, I didn't work on this
2 project, but I think my understanding is that
3 the construction took place in -- you know,
4 thereabout in 2014. So --

5 Q So -- I'm sorry. Go ahead.

6 And so when you say that you didn't --
7 that the -- you know, there wasn't an
8 understanding that a lease was required before
9 construction commenced, are you referring to
10 2013 and before?

11 A Correct, yes.

12 Q And so in drafting your expert report in
13 this case, is it correct that one assumption --
14 or one fact that you relied on was that
15 defendants did not realize that a lease was
16 required from the OMC before 2014; is that
17 correct?

18 MS. STEVENSON: Object to form.

19 THE WITNESS: I don't know that it's
20 really correct to say that. I mean, I think,
21 you know -- I think that there might have been a
22 different outcome in this if that was understood
23 earlier. I think I would say that, but my
24 report was prepared to respond to the FTI report
25 in terms of the compensation that's been

1 calculated now.

2 So, you know -- you know, I think it's
3 unfortunate that we didn't know about that. And
4 I'm putting myself in the developer's seat;
5 right? You know, I'm putting myself like if
6 this was my -- my client, you know, and I would
7 certainly have wanted the benefit of that
8 information earlier.

9 Because, obviously, you know,
10 understanding -- you know, when we look at risk
11 and we look at due diligence and we're thinking
12 about the checklist and all the different
13 questions that are going to come up, you know,
14 the fact of, you know, do we have a mining lease
15 for doing work on a foundation is not going to
16 be something that has ever come up. It's just
17 not going to come up so --

18 Q (By Ms. Nagle) Uh-huh, uh-huh. Let's
19 see. I am -- let's see -- I'm going to go ahead
20 and show you an exhibit. I believe this will be
21 Exhibit 36. Let me see if I can figure out how
22 to do this.

23 MS. STEVENSON: Mary Kathryn, while
24 you're working on that -- this is Sarah -- we've
25 been going a little over an hour, so if you get

1 to a stopping point in the next few questions, I
2 could use a little break.

3 MS. NAGLE: Absolutely, yes. Let me
4 just introduce this exhibit. I have just a
5 couple of quick questions, and then we can take
6 a break, absolutely.

7 Here we go. Okay. This is the
8 document.

9 Q (By Ms. Nagle) Okay. So I'm going to
10 share my screen, and so this document that we're
11 looking at here, just for everyone's benefit, is
12 Bates stamped Osage Wind PRIV-000414 through, it
13 looks like, 420. And this is being entered as
14 Exhibit 36. Give everyone just a little moment
15 to look at it and review it, and I'm just
16 labeling it 36.

17 And this is a memo from Sarah Stevenson
18 to Bill Scott on October 31st, 2013, and the
19 subject line states, "Rights of surface owners
20 to use soil."

21 Ms. Centera, have you seen this document
22 before?

23 A I have not.

24 Q So would it be correct to state that in
25 rendering your expert opinion in this case, you

1 did not rely on this document in any shape or
2 form?

3 A I did not, no.

4 Q Okay. So I realize that you have not
5 seen it before, but turning to the second page
6 of the document, which is Bates stamped 415, I
7 just want to read to you this paragraph right
8 here -- well, I guess I can't highlight on this,
9 but here where it says, "analysis," it says,
10 "The Osage tribe has indicated that it will
11 assert Tradewinds Energy must receive a mining
12 permit from the Osage Minerals Council in order
13 to construct and operate the wind farm, on the
14 grounds that the excavation and construction and
15 permanent placement of the towers constitutes
16 mining of the Osage's mineral estate."

17 So just to read it, you were not aware
18 of this -- of this memo when you wrote your
19 expert report; is that correct?

20 A No, I was not.

21 Q And so you were not aware that in
22 October of 2013, defendants were relaying, at
23 least to one another, that the Osage tribe had
24 indicated that the construction -- the
25 excavation and construction on the Osage mineral

1 estate would constitute mining; is that correct?

2 MS. STEVENSON: Object to form.

3 THE WITNESS: I -- I have not seen this,
4 so I -- I -- I'm not aware of the contents of
5 this information, so...

6 Q (By Ms. Nagle) Would you agree that
7 this memo is dated prior to the commencement of
8 construction?

9 MS. STEVENSON: Object to form.

10 THE WITNESS: It does appear to be, yes.
11 As far as I know, the construction started in
12 2014, yes.

13 Q (By Ms. Nagle) Okay. In your expert
14 opinion, does this -- this sort of information
15 constitute the kind of appraisal that you mention
16 in your report when you state that entities need
17 to be apprised of the need to get a lease? Does
18 this constitute that kind of form of appraisal?

19 MS. STEVENSON: Object to form.

20 THE WITNESS: You know what? I have not
21 seen this before, so I've not had the chance to
22 read it or get familiar with it, so I can't
23 really comment on it.

24 Q (By Ms. Nagle) And so is it true that
25 when you rendered your expert opinion in this

1 case, you were not aware that defendants had
2 received this kind of communication from the
3 Osage tribe; is that correct?

4 MS. STEVENSON: Object to form.

5 THE WITNESS: No, I was not aware.

6 Q (By Ms. Nagle) Okay. That's all the
7 questions I have on that document, and so why
8 don't we go ahead and take a break. Would ten
9 minutes suffice? Does that sound good?

10 MS. STEVENSON: That should be fine.

11 MS. NAGLE: Okay. So we'll come back at
12 12:10 central.

13 (Short break at 12:00 p.m., resumed at 12:14
14 p.m.)

15 Q (By Ms. Nagle) All right. Great.
16 Thank you, everyone. So I'm going to pick back
17 up -- let's turn to -- this is Exhibit 35, your
18 report, Ms. Centera. Looking at Page 2 of your
19 report here -- wait, yes, Page 2. My apologies.
20 I'm interested in the language here where you
21 write, "Specifically, the purported mining of
22 the minerals was a one-time event, confined to a
23 very specific time period and for a very
24 specific limited purpose, i.e., the sorting and
25 crushing of rock and excavation and reuse of the

1 crushed rock for the wind turbine foundations."

2 Oh, you know what? My apologies. I
3 thought I was sharing my screen the whole time,
4 and I was not.

5 A I'm sorry. Can I interrupt for just a
6 moment?

7 Q Yes.

8 A I want to go back to just to -- Mary
9 Kathryn, to something I said earlier about the
10 documents.

11 Q Sure.

12 A I was provided with some additional
13 documents this week in connection with the
14 preparation for the deposition. I did not
15 consider those in my report, and they didn't
16 change my opinion, and I understand those --
17 that information was sent to you. So I just
18 want to make sure the record is corrected as to
19 that.

20 Q Thank you so much for that
21 clarification, and I understand which documents
22 you're referring to. Your counsel did send
23 those to us, and that makes sense, so thank you
24 for that clarification.

25 So I'll go back to Exhibit 35, and I'm

1 going to actually hit Share Screen this time, so
2 here's what I was showing myself before. And so
3 here we are on Page 2 of your report, and I'm
4 interested in this language here in this -- in
5 this top paragraph that we're looking at, and
6 I'll read it again.

7 You state, "Specifically, the purported
8 mining of the minerals was a one-time event,
9 confined to a very specific time period and for
10 a very specific limited purpose, i.e., the
11 sorting and crushing of rock in excavation and
12 reuse of the crushed rock for the wind turbine
13 foundations."

14 Do you see that language right here, Ms.
15 Centera?

16 A I do, yes.

17 Q And do you -- do you -- can you verify
18 that that is the actual language in your report?

19 A Yes.

20 Q Now, did you -- did you rely on the
21 Tenth Circuit's decision in drafting your report
22 and specifically your definition of mining?

23 A Yes, we did -- I did.

24 Q And I believe we spoke about this just a
25 little bit earlier, and you said you were

1 shocked and surprised by the Tenth Circuit's
2 decision. Can you help remind me, what exactly
3 did you find to be different about the Tenth
4 Circuit's definition of mining, different than
5 the definition you would customarily use?

6 A I just -- I think it was just the
7 finding that the -- the crushing of the
8 limestone, you know, constituted mining, that
9 that -- that that use. I think that was what
10 surprised me. I -- you know, again, if I'm --
11 if I'm wearing my developer hat and, you know,
12 I'm aware of this, then I probably would have
13 taken steps to make other provisions.

14 If I had -- if it had been clear to me
15 and, again, I'm sitting in my developer seat and
16 we're talking about the project, you know, early
17 on and we have a clear understanding of what's
18 going to be required -- and, I mean, this is
19 just something that, you know, again, if I think
20 about construction -- you know, and I've seen,
21 you know, turbine foundations myself, and I
22 certainly know what -- you know, I've seen a lot
23 of different kinds, I know what goes into the
24 foundations.

25 And so from the standpoint of

1 construction, if you understand that there's
2 going to be certain requirements, whatever they
3 might be -- and, again, in our -- in the course
4 of our curative work, we work on all kinds of
5 different/different kinds of crossing
6 agreements. There's a whole -- you know, many,
7 many different things that come up in the course
8 of construction that require compliance.

9 And so you're going to make sure that
10 you understand what all those are. And so I
11 think from that standpoint, the fact that this
12 position was taken, again -- you know, ideally,
13 you know about it early, so that you can make an
14 informed decision, you know, as far as -- as how
15 you want to proceed.

16 So I think that was the view, and with
17 my developer hat on, I'm going to be surprised
18 that there's going to be this finding with
19 regard to the crushing of the rock.

20 **Q And so in formulating your expert**
21 **opinion in this case, did you have an**
22 **understanding of whether or not defendants in**
23 **this case were aware that the crushing of the**
24 **limestone and use of that crushed limestone for**
25 **the foundations would trigger the need to obtain**

1 **a lease?**

2 A My understanding of the information is
3 that it wasn't known until later, so I think
4 even in the early stages -- I mean, and, again,
5 my work is early -- right? -- because you're
6 setting it up for financing, so it's going to be
7 done well in advance of construction. Crossing
8 agreements and subordinations and all the
9 different things that we work on are done, you
10 know, many, many months before construction
11 starts.

12 So I think in that case, again, if I
13 think about it from that standpoint and you
14 would consider this in that ordinary course,
15 then you would -- you would want to understand
16 that, so...

17 Q And so just for purposes of your expert
18 report in this litigation, what was your
19 understanding or assumption of when the
20 developer, in this case defendants, had an
21 understanding that the rock crushing that they
22 were undertaking would require a lease?

23 A My understanding is that it was later.
24 It was more near the period of time when they
25 were in construction.

1 Q So near the period of time of
2 construction?

3 A Right.

4 Q Okay. Now, also here on Page 2, I note
5 that you state, "An ongoing mineral lease is not
6 appropriate here."

7 In your opinion, why is an ongoing
8 mineral lease not appropriate?

9 A Because there's -- you know, there's not
10 ongoing mining. You know, again, in my
11 understanding of mining in my work and what I
12 traditionally see, mining is -- and, you know,
13 again, if I think about my curative work, and we
14 looked at lots of oil and gas leases, for
15 instance, and different operations. And in
16 those cases, it's an ongoing -- there's some
17 kind of an ongoing activity.

18 And if there's not an ongoing activity,
19 then a lot of cases, the rights will terminate.
20 And so that's the perspective that I'm looking
21 at here, if I'm thinking about some kind of an
22 ongoing activity. And a lot of our work is we
23 use affidavits to get rid of leases where there
24 is no ongoing activity. We're able to get those
25 removed from the record. So that's the

1 perspective that I'm using here.

2 **Q** In your expert opinion, when you state
3 that an ongoing mineral lease is not
4 appropriate, when -- what would you put as the
5 date of termination for the mineral lease? When
6 did the mining stop?

7 A I think if you look at it from the --
8 from the -- I'm not even sure that -- I guess
9 the court did say that it was mining, so, you
10 know, if you look at it from the standpoint of
11 some of these permits, then maybe it would be
12 for the three months that the -- that the
13 construction of the foundations was going on.

14 You know, I'm not familiar enough with
15 all the different -- you know, the details
16 around this case, but -- in terms of the
17 construction, but that's what I would say, based
18 upon what I know.

19 **Q** And so is that expert opinion that
20 you're drawing about whether or not an ongoing
21 mineral lease is necessary, is that based on the
22 Tenth Circuit's definition of mining?

23 A Well, I think what I'm doing is I'm
24 comparing it back to the FTI report and the --
25 and I think the assertion in that report that

1 part of the compensation for damages is the
2 entirety of the operations, period, of the
3 leases. So if you look at it from that
4 standpoint and then you take it back and you
5 compare it to this kind of a mining operation
6 that we're talking about here, I think that's
7 where there's no -- there's no correlation.

8 And so if you think about it from that
9 standpoint and then you try to look at this case
10 and say, okay, there was some mining, when would
11 you say that that mining occurred, in my view,
12 that mining would have occurred just during that
13 period of time that you would have actually been
14 in the construction of the foundation. So if
15 you were to go get this permit or something of
16 that sort, it would be for that period of time.

17 **Q Would -- utilizing the Tenth Circuit**
18 **definition, are you saying that the permit would**
19 **have covered the time during which the rock was**
20 **crushed to be used for the foundations?**

21 A I think that's what happened during the
22 construction of the foundation, so that would be
23 the period of time.

24 **Q And what is your understanding of what**
25 **plans the defendants have made to return the**

1 crushed rock back to the Osage mineral estate
2 when they're done using that crushed rock?

3 A I'm not aware of that. I don't know. I
4 haven't consulted on that, so I don't know.

5 Q So you're not aware of any plans to
6 return the crushed rock to the mineral estate;
7 is that correct?

8 MS. STEVENSON: Object to form.

9 THE WITNESS: Yeah, I've had no
10 discussions with them as to what their plans are
11 later on, so I don't know. This is not my
12 project, so I'm not working on that part of it.

13 Q (By Ms. Nagle) Do you have any
14 understanding of whether the Osage Wind project
15 could continue operating if the crushed rock was
16 taken out of the foundations of the wind
17 turbines and no longer there?

18 MS. STEVENSON: Object to form.

19 THE WITNESS: Well, I think it would be
20 difficult to do at this point; right? I mean, I
21 think that's why early on in the process -- and,
22 again, I'm talking about what my role would have
23 been, which would have been much earlier, I
24 think you would look -- have looked at -- more
25 than likely you would have looked at

1 alternatives; right? If you had understood that
2 you were going to end up in this situation with
3 the -- with this, you know, question around the
4 limestone, I think you would have looked at
5 alternatives. That certainly would have been
6 what we would have done.

7 You know, what other options do we have?
8 I mean, that's kind of a standard -- one of the
9 standard first questions that I always ask is
10 what are our options, what other options.
11 There's other quarries, there's other things
12 that we could do, you know. So I think that
13 would have been one of the questions. So now at
14 this stage, yeah, I can't really comment on
15 that.

16 **Q (By Ms. Nagle) In this instance, what**
17 **is your understanding of what other options the**
18 **defendants considered?**

19 A I'm not sure what those are. I would
20 just say if it were -- if I had been involved at
21 that stage, I think we would have tried to have
22 looked at other options, as far as bringing in
23 -- you know, because if you think about the
24 construction, and we know -- as I say, in my
25 experience, I know materials are brought in for

1 roads routinely and for different things, then I
2 think as part of that, you would have looked at
3 the foundations as well.

4 Q Uh-huh. So I'm going to introduce an
5 exhibit that's been previously introduced. This
6 is Exhibit 5, and it's Bates stamped -- sorry,
7 hold on just a second. Let me get down here.
8 Osage Wind-012246, I believe this was first
9 introduced in Mr. Pfahl's deposition. Are you
10 familiar with this document, or have you seen
11 this document before?

12 A I don't recall seeing this, no. I don't
13 recall seeing it.

14 Q Well, I can represent to you that it is
15 a purchase order. Are you familiar with Burbank
16 Materials, by any chance?

17 A I am not, no.

18 Q Okay. Do you recognize the Osage wind
19 farm with the address here?

20 A I recognize the name of the project,
21 yes.

22 Q And are you familiar with some of these
23 materials here that are on the purchase order?

24 A I'm familiar with shay and shale -- or
25 pardon me, I'm sorry -- clay and shale. I'm

1 familiar with that. I'm not sure that I'm
2 familiar with everything, but those things I am,
3 generally.

4 Q And so are you aware that during the
5 course of construction of the Osage wind farm,
6 that defendants did purchase off site materials
7 and minerals for the purposes of constructing
8 the wind farm?

9 A I'm not specifically aware of it. As I
10 say, I'm not surprised to hear of it, just
11 because I know -- I know it happened on these
12 projects, you know, routinely, especially for
13 the roads. It's usually necessary to bring in
14 outside material, so I'm not surprised to hear
15 that.

16 Q In your expert opinion, why didn't
17 defendants purchase all of their materials off
18 site, as opposed to taking some materials from
19 the Osage mineral estate itself?

20 MS. STEVENSON: Object to form.

21 THE WITNESS: I think it's because they
22 didn't know. I mean, that's my understanding,
23 is that they weren't aware. I -- you know,
24 again, it's -- to me in my experience, if you're
25 aware of these kinds of things through the

1 course of construction, you usually take steps
2 to make other provisions.

3 Q (By Ms. Nagle) And in your expert
4 opinion, what would constitute knowledge that a
5 lease is required?

6 A I think being told specifically by the
7 party that you need to have a lease. I mean,
8 normally, as you're going through the process,
9 whether it's permitting -- or I should really
10 talk about what I know, which is curative work.
11 You know, we submit, you know, a request for a
12 subordination or some particular document. We
13 do a lot with federal agencies, and we get a
14 very specific request from them for documents,
15 and then we comply with all.

16 So normally we make a request, we say,
17 we have a project, we need a subordination, they
18 send us a form. So I think that's what I'm
19 accustomed to seeing. So, you know, just
20 thinking about the early correspondence that
21 went back and forth, at that point, you know,
22 normally, in my world, I would expect to see
23 some kind of specific request for whatever it
24 would be, documentation or what have you, a
25 lease.

1 Q Uh-huh. Okay. Let's go to -- sorry,
2 hold on just one second. Okay. Give me just a
3 second here. Looking through a couple of my
4 documents. Okay. I'm going to -- I believe I'm
5 at Exhibit 37, I think. I'm going to introduce
6 a new exhibit, and let me open that up for --
7 okay.

8 So this is Exhibit 37 that I'm
9 introducing. It is Bates stamped OSAGE WIND
10 024749, and it's an email chain, and it goes all
11 the way to OSAGE WIND-024751. Ms. Centera, are
12 you familiar with this document, or have you
13 seen this communication before?

14 A I don't believe that I have, no, no.

15 Q Okay. So -- go ahead.

16 A No, I apologize for talking over you.
17 No, it doesn't look familiar, huh-uh.

18 Q I see here that it looks like these
19 emails were being exchanged in May of 2014. Do
20 you have an understanding of whether or not this
21 was before or after the commencement of
22 construction of the wind farm project?

23 A I imagine it was before, but I can't say
24 for certain, because I'm not sure exactly when
25 the construction started.

1 Q Okay. And I see here there's an email
2 from Joan Heredia, it looks like May 22nd, 2014,
3 to several -- several people at the EGPNA. Are
4 you familiar with who Joan Heredia is or what
5 her role is or was at that time at EGPNA?

6 A Only on what's on the email there.

7 Q Okay. I will read -- she writes to
8 Aaron Weigel. She states, "Aaron, I note in the
9 attached POD fees analysis being performed for
10 road aggregate. In an abundance of caution that
11 we do not want to trigger a minerals permit,
12 will you please look into this and report back
13 to this group on what the plans are. I note it
14 is common to try and use on site material when
15 possible, but as you know, Osage is special."

16 What is your -- do you have an
17 understanding of what Joan Heredia means when
18 she writes that, quote, unquote, Osage is
19 special?

20 MS. STEVENSON: Object to form.

21 THE WITNESS: You know what? I don't
22 know. I'm not sure, because I'm not sure what
23 she was thinking or -- I couldn't comment on
24 that.

25 Q (By Ms. Nagle) Okay. If you move up,

1 in response to her email, Aaron writes on May
2 22nd, "Ron, Mike, Craig," and here is his email,
3 and I'm going to skip right to this sentence
4 right here that my cursor's over. "It is very
5 important that we not remove any soil from the
6 project site or use site materials in lieu of
7 materials we would typically buy off site in
8 developing a wind project. Osage Nation has
9 mineral rights for the project lands, and
10 removal of soil, especially for commercial gain,
11 could constitute mining."

12 In your expert opinion, does this
13 demonstrate that defendants knew in May of 2014,
14 that if they use the on site minerals they were
15 taking from the Osage minerals estate to crush
16 and fill the wind turbine foundations, that they
17 would need to get a lease from the Osage Nation?

18 MS. STEVENSON: Object to form.

19 THE WITNESS: Not necessarily, no, no.
20 I mean, I think -- in my experience, again,
21 negotiating many, many site control documents,
22 projects have their own particular requirements.
23 I have worked on projects where landowners were
24 very specific about weeds and weed control, and
25 they were very particular about dirt, you know,

1 not being moved, even from turbine location,
2 maybe, to turbine location. So I don't know
3 that you would necessarily jump to that
4 conclusion at all.

5 I mean, I think there's a lot of
6 correspondence, and usually that takes place
7 with regard to specific landowner concerns or
8 questions and, you know, making sure that
9 information gets to the -- to the construction
10 team or whoever it is. It is also really
11 important, so you're not necessarily going to
12 jump to that conclusion, no. It might just be
13 there's some particularities about this
14 particular landowner or this project.

15 I mean, there's all kinds of things,
16 from cattle guards or moving of cattle, or I
17 could go on and on and we could talk about it
18 all day, about all the different requirements
19 that come up.

20 Q (By Ms. Nagle) So in your expert
21 opinion, this does not constitute knowing that a
22 mineral lease could be required; is that
23 correct?

24 A That's correct.

25 Q What would constitute knowing that a

1 mineral lease is required?

2 A Well, I think we certainly have clarity
3 now -- right? -- because we have the Tenth
4 Circuit opinion. And I think I've already said
5 that I feel like that's extraordinary in my
6 experience; right? I mean, you're just not used
7 to seeing that. So if I'm sitting on this
8 development team, I'm not going to make the
9 assumption that we need to go (inaudible).

10 THE REPORTER: Need to what?

11 THE WITNESS: I'm not -- I'm not
12 expecting that it's going to lead to a develop
13 -- or pardon me -- a mining lease.

14 Q (By Ms. Nagle) So in your expert
15 opinion, Aaron Weigel, in his e-mail on May
16 22nd, 2014, is incorrect?

17 A Incorrect as to?

18 Q Well, he states, quote, it is very
19 important that we not remove any soil from the
20 project site or use site materials in lieu of
21 materials we would typically buy off site in
22 developing a wind project. Osage Nation has
23 mineral rights -- mineral rights for the project
24 lands, and removal of soil, especially for
25 commercial gain, could constitute mining, end

1 quote.

2 And you're saying that doesn't
3 constitute knowledge that a lease would be
4 required, and I'm just trying to understand from
5 your expert opinion where Aaron got it wrong.

6 A Well, I think also he's saying removing
7 it from the property, which we're not going to
8 be removing anything from the property; right?
9 And I think that comes back to my statement
10 about the concerns of landowners and issues that
11 they might have. I -- you know, I can't comment
12 on whether he got it right or whether he got it
13 wrong, but I would just say from this
14 correspondence, this very narrow review -- and,
15 again, I haven't seen this before, but from this
16 very narrow review, I'm not going to assume that
17 we're going to need a mining lease; right?
18 That's not going to occur to me, because we're
19 not planning to remove anything from the site.

20 Q Uh-huh. And in addition to removing, he
21 also refers to "or use site materials in lieu of
22 materials we would typically buy off site in
23 developing a wind project."

24 Do you have an understanding of whether
25 or not the developer in this instance,

1 defendants, used site materials from the Osage
2 mineral estate in lieu of materials they could
3 have otherwise purchased off site?

4 A I need to read that.

5 Q Sure. Take your time.

6 A Yeah, I still -- I'm not in Aaron's
7 head, so I don't know exactly what, you know, he
8 was trying to convey, but in my mind, this is
9 not going to lead me to believe that you need a
10 lease or for -- or that's going to constitute
11 mining.

12 Q Okay. And so do you have an
13 understanding, in forming your expert opinion,
14 whether or not defendants used on site materials
15 from the Osage mineral estate that they could
16 have otherwise purchased off site?

17 A I think they did in the foundations.
18 They used the material that was there, correct.

19 Q And in your expert opinion, despite this
20 email, defendants did not know in May of 2014
21 that that could trigger the need for a lease; is
22 that correct?

23 A No, I -- because I think what they're
24 saying is, in lieu of materials we would
25 typically buy off site. But, you know, I -- no.

1 Q So -- okay. So in your expert opinion
2 where you conclude that defendants did not know
3 that a lease was necessary for their use of
4 minerals from the Osage mineral estate, what
5 evidence or documentation, or what is -- what
6 have you relied on to formulate that expert
7 opinion that they did not know?

8 A I'm sorry. Could you -- could you
9 repeat the question?

10 Q Sure. So you stated earlier -- I
11 believe you stated that defendants did not know,
12 prior to commencing construction, that a lease
13 would be required. I also understand that
14 you've looked at this email and you've said this
15 also doesn't constitute knowledge that a lease
16 was required. I'm asking you, what evidence did
17 you look at that substantiates that they did not
18 know that a lease was required?

19 MS. STEVENSON: Object to form.

20 THE WITNESS: Well, I think if you
21 continue reading this, it says the Osage Nation
22 has minerals and that if they're removed for
23 commercial gain or if they're taken off and are
24 sold. And I -- I'm not sure that I understand
25 what you're asking.

1 Q (By Ms. Nagle) Okay. That's fine. I
2 think we can be done with that document. All
3 right. So what is your definition of
4 "reasonable due diligence"?

5 A Of reasonable due diligence, with
6 respect to a project as a whole or in regard to
7 -- what are you meaning in regard to?

8 Q Well, in regards to this project, what
9 would constitute reasonable due diligence?

10 A As it pertains to what? Just the
11 entirety of the project or...

12 Q Do you have any opinion -- does your
13 report opine on reasonable due diligence in any
14 shape or form?

15 A Not that I'm aware of.

16 Q Okay. So you don't actually have an
17 opinion in this case of whether or not
18 defendants performed reasonable due diligence
19 regarding the need to get a lease before they
20 mined on the Osage mineral estate; is that
21 correct?

22 A No, I think my report is in response to
23 the FTI report -- correct? -- on the -- on the
24 compensation. I'm not sure that I'm -- that I'm
25 done commenting on the -- on the due diligence,

1 because I think we're past that. So I don't
2 know. What I think of due diligence, it's a --
3 it's a very large -- you know, a box of
4 material, so I'm not trying to be difficult; I
5 just -- if you want me to give you some
6 parameters or you want to give me some
7 parameters, I'm happy to try to do that.

8 Q No, I think it's fine. I mean, just to
9 clarify, so your expert report does not opine on
10 whether or not defendants adequately performed
11 due diligence; is that correct?

12 A I'm not trying to opine on that, no.

13 Q Okay. I am now going to go back to your
14 expert report, so let me share my screen. And
15 so here we are, and I am looking at Page 4 of
16 your report and specifically down here under
17 Summary of Expert Opinion. And I note here in
18 your second statement, "Second, if a wind energy
19 developer was clearly apprised, prior to
20 construction commencing, that a mining lease was
21 required to engage in ordinary turbine
22 foundation excavation for a wind energy project,
23 would the developer have practical and effective
24 alternatives to using minerals so mined from the
25 mineral estate in the construction of

1 foundations for the project?"

2 My question is -- to you is, what is
3 your definition of "clearly apprised" here in
4 your report?

5 A As I mentioned, in my work, we will make
6 a request to an agency, could be to a bank, it
7 could be to a utility, it could be to some
8 entity, for when we'll say we're building the
9 project and we're going to be crossing your
10 easement or we need a subordination or what have
11 you. And there's a specific exchange that
12 happens with regard to documentation.

13 So I think in my view my expectation
14 there is that there would be a clear request for
15 some kind of a document, whatever it might be.

16 Q When you mentioned the clear request,
17 who would the request be coming from?

18 A Normally, it's from the agency that you
19 -- that you consult with; right? You contact
20 the agency, we're building this project, here's
21 all of our documentation. And then, you know,
22 you -- then there's a -- then they will respond
23 in kind by letting you know what documentation
24 is required in order to be able to build the
25 project.

1 Q So I am now going to introduce what I
2 believe is going to be Exhibit 38, and let me
3 just pull that up here really quick, so we are
4 going to look at this. All right. Okay.
5 Sorry, my apologies.

6 Okay. So this is -- Exhibit 38 is Bates
7 stamped OSAGE WIND PRIV-000243. It is a letter
8 dated October 9th, 2014, to Mr. Francesco
9 Venturini, president of EGPNA, and it looks like
10 it's from the superintendent of the United
11 States BIA, the Department of Interior, Bureau
12 of Indian affairs.

13 Ms. Centera, are you familiar with this
14 document? Have you seen this document before?

15 A I have, yes.

16 Q I'll read here. It states, "You are to
17 refrain from any further excavation of minerals
18 until such time that you have obtained a sandy
19 soil permit through the Osage agency."

20 In your expert opinion, would this
21 constitute a situation where defendants were,
22 quote, unquote, clearly apprised that a lease
23 would be necessary prior to or continuing to
24 excavate minerals?

25 A Well, I think what I would say is you

1 certainly would want to take a look at the
2 information, you know. I think it's October, so
3 that's conceivably in the middle of
4 construction. So, you know, I think what I
5 mentioned is that normally, as I said, these
6 conversations take place early, and there's an
7 opportunity to review all the material, look at
8 all the material, understand the nature and
9 extent of the information.

10 So I think at this -- at this stage,
11 you're certainly going to want to ask for more
12 information and understand what the basis is for
13 -- for the request.

14 **Q In your expert opinion, when defendants**
15 **were emailing each other memos in October of**
16 **2013 stating that the Osage tribe had told**
17 **defendants a lease was required, would that have**
18 **been a moment when they should have asked for**
19 **more information about obtaining a lease?**

20 MS. STEVENSON: Object to form.

21 THE WITNESS: I can't say because I
22 wasn't there at the time, and I'm not sure what
23 -- you kind of went out a little bit when you
24 said that, when -- when was the exchange, you
25 said? I'm sorry.

1 Q (By Ms. Nagle) Sure. That was Exhibit
2 36 that we looked at earlier. If you'll give me
3 a second, I'll pull it back up. Let's see here.
4 Let me just find it really quick. Where did it
5 go? Oh, here it is. Okay.

6 So if -- so I'm just -- I'm trying to
7 understand when in -- when, in your expert
8 opinion, defendants were apprised, if they were
9 ever apprised, that there was a need for a
10 lease. And, actually, let me just maybe stop
11 and ask that question.

12 In your expert opinion, in this case
13 where defendants -- have they ever been apprised
14 of the need to get a lease for the mining of the
15 Osage mineral estate?

16 A Were they -- clear -- well, I think
17 certainly that the Tenth Circuit opinion --
18 right? -- is that they needed to go back. So at
19 that point, we had clarity, so I think certainly
20 at that point. But I think, you know, that
21 letter that you just showed -- I'm not familiar
22 with this memo, so I really can't comment on
23 that. But I think certainly the letter that you
24 showed a moment ago is the first indication that
25 I saw where the agency came in or some

1 representative, potentially, of the agency --

2 Q Uh-huh.

3 A -- and said that there needs to be
4 something specifically provided; right?

5 Q Uh-huh.

6 A So, you know, that would be the first
7 clear indication, perhaps, that there was a
8 requirement. But I think at that late stage,
9 you know, you're in the middle of construction,
10 you're not necessarily going to stop
11 construction, but you are going to go ahead and
12 go back and then have a conversation; right?
13 But I think that -- at least in my understanding
14 of the documentation that I see, that was the
15 first case where there was something that was
16 put forth in terms of a requirement.

17 Now, I can tell you, too, in my
18 experience that sometimes you come back with a
19 lot of requests and some things don't apply;
20 right? So you're certainly going to have a
21 conversation around the -- whatever
22 documentation is requested.

23 So -- and we find this even in our, you
24 know, negotiations of crossing agreements or
25 whatever kind of curative work might be done.

1 So I think that, no, I can't, again, comment on
2 this memorandum, but if we're looking at some
3 kind of a clear requirement that -- in that
4 prior letter that you said, that's the first
5 time that there was at least something put forth
6 for the project to consider.

7 Q So in your expert opinion and in terms
8 of formulating your expert report where you
9 state that -- you discuss being clearly
10 apprised, "Defendants were clearly apprised when
11 the United States notified them of the need to
12 get a lease in October of 2014, but they were
13 not clearly apprised when the OMC informed them
14 of this need in October of 2013"; is that
15 correct?

16 MS. STEVENSON: Object to form.

17 THE WITNESS: What -- I didn't see the
18 OMC -- the '13, when --

19 Q (By Ms. Nagle) Okay. So what we're
20 looking at right here is what's been introduced
21 as Exhibit 36, and I'll note the date is October
22 31st, 2013. It's an internal memo from Sarah
23 Stevenson to Bill Scott, the attorneys for
24 defendants. And as we discussed earlier today
25 at page Bates stamped 415, there's this

1 paragraph here stating, "The Osage tribe has
2 indicated that it will assert Tradewinds Energy
3 must receive a mining permit from the Osage
4 Minerals Council in order to construct and
5 operate the wind farm, on the grounds that the
6 excavation and construction and permanent
7 placement of the towers constitutes mining of
8 the Osage mineral estate."

9 So my question to you is, just for
10 purposes of your expert report, this is not
11 being clearly apprised; correct?

12 MS. STEVENSON: Object to form, and the
13 witness has already testified a number of times
14 she has not seen this document, in this
15 deposition. So I don't know if we need to
16 continue asking her questions about her thoughts
17 about the documents she's seeing for the first
18 time today.

19 MS. NAGLE: Okay. Sure. I'm just
20 trying to understand, she's used a terminology
21 in her report, "clearly apprised," if this would
22 constitute that. But if she can't opine on that
23 today or ever, then we can also rest with the
24 understanding that her expert report doesn't --
25 doesn't extend to 2013 understandings, unless

1 she wants to answer whether or not this would
2 satisfy the "clearly apprised" standard.

3 THE WITNESS: Yeah, I really can't
4 comment on this memorandum out of context so --

5 Q (By Ms. Nagle) Okay. So in your expert
6 opinion, just so I understand, defendants became
7 clearly apprised in October of 2014?

8 MS. STEVENSON: Object to form.

9 THE WITNESS: I'm not -- that was the
10 first time that I'm aware of that a specific
11 indication of documentation was put forth in a
12 letter of that kind. That -- that's what I'm
13 saying. I'm saying that you're going to stop
14 and take a look at it and understand what's
15 going on at that time.

16 Q (By Ms. Nagle) Uh-huh. So just so I
17 understand, you used the words "clearly
18 apprised" in your expert report, and -- and just
19 so in your expert report, the date in which
20 defendants did become clearly apprised was this
21 -- when this letter was sent in October of 2014;
22 is that correct?

23 MS. STEVENSON: Object to form.

24 THE WITNESS: It's when they had
25 information that there was a request put forward

1 for information. So I'm not sure that you would
2 consider it clearly apprised, because you
3 haven't had a chance to do your due diligence
4 and understand all the different, you know,
5 requirements.

6 Q (By Ms. Nagle) So -- and I'm not trying
7 to be difficult here; I'm just trying to
8 understand. So when you say, "clearly apprised"
9 in your report, is it your expert opinion that
10 defendants did not become clearly apprised until
11 the Tenth Circuit issued its decision?

12 A I think at that point, you were clearly
13 apprised of what the requirement was, yes.

14 Q But for purposes of your expert report,
15 you aren't certain whether or not defendants
16 were clearly apprised before the Tenth Circuit's
17 decision; is that correct?

18 A If I was sitting in their shoes, knowing
19 just the information that I have, I would not
20 have known that, no.

21 Q Okay.

22 MR. ASHWORTH: I'm sorry. I didn't get
23 the last part. What was the last part you said,
24 ma'am? You were -- that you would not -- what
25 did -- what did you say?

1 THE WITNESS: I -- I would not have
2 known, no.

3 MR. ASHWORTH: You would not have known?

4 THE WITNESS: I'm sorry. Can some --
5 can -- Janna, can you repeat that back? Because
6 I'm -- I don't want to misquote myself.

7 THE REPORTER: That's what I heard.

8 "If I was sitting in their shoes,
9 knowing just the information that I have, I
10 would not -- I would not have known that, no."

11 MR. ASHWORTH: Sorry, I just didn't get
12 it. It cut out.

13 THE WITNESS: Sorry.

14 Q (By Ms. Nagle) Okay. Let's see here.
15 Okay. Going back to Page 5 of your report -- so
16 let me pull that up again. So now I'm on Page
17 5, and I will share my screen so we can all see
18 it.

19 So, again, I know we're dealing with
20 this "clearly apprised" language. Let's see if
21 I can find it. Oh, here we go. Okay. Right.
22 So you write here, "I have assessed the
23 supporting documentation provided by Osage Wind,
24 and all such evidence would support a finding
25 that reasonable diligence would not have led a

1 knowledgeable wind developer to anticipate the
2 need for a mineral lease prior to construction
3 on the Osage Wind project."

4 What is your definition of "anticipate"
5 here and how you're using it in your expert
6 report?

7 A I think it's just based upon my
8 experience, based upon my experience in having
9 worked on many projects and just understanding
10 what typically constitutes mining, that it --
11 you would not have concluded that you would need
12 a mineral lease.

13 Q So is "anticipate" knowing with
14 certainty that a lease is required? Is that
15 anticipation?

16 A I -- knowing with certainty? I suppose.
17 You know, I -- I think, you know, just kind of
18 taking a step back from the project, if I'm
19 walking into a project, you're going to try to
20 anticipate as much as you can what's going to
21 come up, what's going to be the subject of the
22 due diligence.

23 And so based upon that experience and my
24 knowledge and working knowledge of projects, I
25 suppose that's what I mean, that I wouldn't have

1 expected that there would have been a need for a
2 mineral lease. I mean, even taking into account
3 everything -- you know, there's a lot of
4 information that gets exchanged, there's a lot
5 of information that gets talked about in
6 preparation for projects.

7 Q Uh-huh.

8 A And these projects are difficult, and
9 the amount of documentation is enormous that
10 goes into putting all these projects together.
11 So I think that's why -- if I'm thinking about
12 this from my perspective, I think that's why
13 understanding with clarity what those
14 requirements are, you know, is really important.

15 So here I'd suppose I would equate
16 "anticipate" to "expect."

17 Q And would being informed by -- in your
18 experience in this field, would being -- if you
19 were informed by a governmental agency that a
20 lease is required, would that cause you to
21 anticipate or expect that a lease is required?

22 A It really depends on -- on -- on the
23 requirements. It depends on the -- on the
24 standing, it depends on the jurisdiction. You
25 know, there is a lot of things that come up

1 through the course of projects, so if you're
2 asking me if you just, at face value -- you
3 know, every single thing that comes up, you do
4 you take that at face value and are you trying
5 to solve that or address that? Not necessarily.

6 I mean, everything has to be looked at,
7 it has to be synthesized, it has to be
8 understood within the context of the project.
9 So through the course of the county permitting,
10 there is a series of documentation that are
11 required. So I think in this the tribe had a
12 different relationship and relationship to the
13 project, so -- but -- but -- so just carte
14 blanche every single request that's made, are
15 you going to, you know, jump on it verbatim? I
16 would say no. There is due diligence that
17 happens, there's a -- there's a conversation
18 that happens, does it really apply.

19 In some cases, there's requests that are
20 made, but they may not necessarily apply. It
21 depends.

22 Q In your experience, how many projects
23 have you worked on where a governmental agency
24 had stated a lease or permit was required where
25 it was not actually required?

1 A I -- I can't give you a number on that.
2 I don't know.

3 Q Are you -- do you recall any instances
4 where that happened?

5 A Where a lease was required? Not
6 necessarily a lease, but there can be other
7 provisions that, maybe, were required. There
8 can be wetlands requirements, there can be
9 recording of certain maps, there can be
10 recording of survey maps, or there can be a
11 whole bevy of things that come up.

12 And so I think, you know, sometimes
13 there's requests that are made, and then, you
14 know, there's a discussion that has to happen.
15 I can't say every single case you're going to --
16 you're going to do a lease, huh-uh.

17 Q Are you aware of any instances on
18 projects where you've worked where the United
19 States said a lease was required and actually
20 the United States just got it wrong?

21 A I -- you know what? I'm not aware of
22 the United States in that role, so no, no.

23 Q And are you aware of any instances where
24 a tribal nation has stated that a lease was
25 required for a project that you worked on and

1 that tribal nation just got it wrong?

2 A I'm not aware of leases being
3 negotiated. Well, let me -- let me backtrack on
4 that, because that's not really correct, because
5 we are going to negotiate leases for site
6 control. So I'm not aware of it right off, no,
7 I'm not aware of it right off. But I -- like I
8 said, we work on multitudes of projects, so I
9 can't speak to every single project.

10 Q Uh-huh. And so in this particular case
11 where we've now looked at documents today that
12 show that, internally, defendants were
13 discussing the need for a lease if on site
14 materials were used in lieu of things to be
15 purchased off site, the Osage tribe itself was
16 saying a lease was required and the United
17 States, what more in your expert opinion would
18 be necessary to get to that place where you
19 could say a reasonable wind developer would have
20 anticipated that a lease was required?

21 MS. STEVENSON: Object to form.

22 THE WITNESS: Well, I think what we have
23 said is that we had clarity around the lease at
24 the point that the opinion was issued. And I
25 think even in the opinion, they say that there

1 was some ambiguity around that. But because
2 there's a requirement for them to rule in favor
3 of the tribe, that they're going to rule in
4 favor of the tribe.

5 So I think even in that case, you know,
6 it's -- we're looking at a situation where it
7 wasn't entirely clear. I think if you look at,
8 certainly, the letter that was sent, that there
9 was a question raised, and they said, you know,
10 at some point -- but they don't really talk
11 about a lease, they talk about a permit, I
12 think, in that letter.

13 So then there seems to be some conflict
14 there -- correct? -- or -- are you getting a
15 lease, or are you getting a permit? I think --
16 and, obviously, there's a lot of internal
17 conversations that take place. That takes place
18 routinely on projects, but it seems to me that
19 even with respect to the request, it's a little
20 bit in conflict -- right? -- because I think the
21 Tenth Circuit opinion said a lease.

22 So I think what you'd have to do is go
23 back and do diligent -- do your due diligence
24 and try to understand. But it seems to me that
25 there's a fair amount of, you know, ambiguity

1 all the way around, that I don't know that there
2 was clarity.

3 I mean, you know, if everything was
4 clear, why would we have a lawsuit; right? I
5 mean, if you could point to something clearly
6 and say, here is what you need to do, why would
7 we have filed litigation? I mean, this is --
8 you know; right? You would just be able to
9 point to something and say, here it is.

10 But in this case, we had to rely upon
11 the court to come in and say, you need a lease
12 because of this particular. So I think in my
13 view, if I take a step back, you know, I --
14 clearly, there's some -- you know, there's
15 ambiguity here -- correct? -- that we had to
16 rely upon some other third party to come in and
17 look at all the facts and say, you know -- so if
18 I'm -- again, if I'm in the developer seat,
19 certainly now we have hindsight, and we're much
20 smarter now for doing a debrief on this; right?
21 We're going to know what we're not going to do
22 the next time, or what have you; I don't know.

23 But, you know, we're all a lot smarter
24 now, but we have the benefit of that, you know,
25 looking back. So I think if I'm sitting in this

1 seat, what you're asking me to do, that --
2 and/in trying to understand these facts, I
3 think, you know, I'm not -- I'm not sure that
4 it's clear.

5 Q (By Ms. Nagle) Okay. Thank you. I
6 think that really about wraps up my questioning
7 for today.

8 MS. NAGLE: So I don't -- I know we've
9 been going for quite a while, and I'm sure at
10 some point folks will want to eat lunch, but I
11 don't know, Sarah and Stuart, what your thoughts
12 are, and certainly want to take into account the
13 witness's need to eat and take a break so -- but
14 I think -- I think I'm ready to pass the
15 witness.

16 MR. ASHWORTH: Ms. Centera, my name is
17 Stewart Ashworth, and I'm an attorney with the
18 U.S. Attorney's office. I do have several
19 questions I would like to ask, and I anticipate
20 it being in excess of an hour. We have been
21 going for a while, and I don't know what time it
22 is over there, if you've already had lunch, if
23 you would, you know, want to take a five-minute
24 break and keep on going, or if you want to take
25 a lunch break. It's up to you.

1 THE WITNESS: For me here, it's just
2 after 11:00, so we could probably go until what,
3 for me, is 11:30, maybe, and then take a break
4 at that time if that works.

5 MS. STEVENSON: And, Stuart, this is
6 Sarah. I think we have lunch coming at about
7 11:30 or 11:45, so I think it may make sense if
8 we want to get started, and then we can take a
9 little longer break so the witness can eat when
10 it arrives.

11 MR. ASHWORTH: Yeah, that works for me.
12 We'll just go ahead and get started.

13 CROSS EXAMINATION

14 BY MR. ASHWORTH:

15 Q Ma'am, if you could --

16 MR. ASHWORTH: Michelle, can you pull up
17 the reports?

18 (Discussion off the record)

19 Q (By Mr. Ashworth) Ms. Centera, as we
20 are pulling up your report, I believe it was
21 previously marked -- or marked during your
22 deposition as Exhibit Number 35, I believe.

23 As that -- as that report's being pulled
24 up, who did Osage Wind retain, you or TerraPro
25 Solutions?

1 A Well, I -- I don't -- you know, I work
2 under the umbrella of my company, so they would
3 have retained TerraPro Solutions. I would have
4 been the one issuing the report, so -- but, you
5 know, I don't necessarily work independently; I
6 work under the umbrella of my company.

7 Q Okay.

8 (Discussion off the record)

9 Q (By Mr. Ashworth) So, Ms. Centera, I
10 say that just because right here in the first
11 sentence of your report, it says, "Kimberlee
12 Centera, TerraPro Solutions, has been retained
13 by Osage Wind, LLC."

14 It's your opinion that really they
15 retained you and TerraPro, it's one and the
16 same, pretty much, as the expert in this case;
17 is that correct?

18 A Yes.

19 Q Okay. Is there anyone else at TerraPro
20 Solutions who have helped or assisted you in
21 forming your opinions?

22 A In forming my opinions?

23 Q Yes.

24 A No, I -- no, I had help with the report,
25 but in terms of forming the opinions, these are

1 my opinions.

2 Q Okay. And when you say that you've had
3 help with your report, are you saying that you
4 had help with someone -- by someone drafting
5 your reports -- drafting your report?

6 A Drafting the report, correct.

7 Q Okay. Does that mean you had help with
8 someone typing the report or someone actually,
9 you know, putting opinions on the paper, doing
10 research?

11 A Typing the report and assisting with
12 some of the research, yes.

13 Q Okay. Who would that have been?

14 A That would have been Brittany Newsome.

15 Q Britney Newson?

16 A Newsome.

17 Q Newsome?

18 A Yes.

19 Q When did Osage Wind retain TerraPro as
20 an expert in this case or, you know, as an
21 expert?

22 A Gosh, the exact time, I want to say it
23 was shortly before the report -- maybe around
24 the middle or end of September of 2020.

25 Q Okay.

1 A I would -- I would estimate. I don't
2 know the exact date.

3 Q In your report -- well, first off, in
4 you report you refer to TerraPro Solutions as
5 TPS. I guess for purposes of your deposition,
6 if I say, "TPS," you would understand that I'm
7 referring to TerraPro Solutions. Is that okay?

8 A Yes.

9 Q Okay. In your report the -- the second
10 paragraph, second full sentence, it says,
11 "Centera is the president and CEO of TPS, a
12 leading risk management consulting firm
13 specializing in the development, financing,
14 construction, and operation of wind" -- I'm
15 sorry -- "renewable energy projects."

16 Did I read that correctly?

17 A I'm sorry. Where are you? Yes,
18 president, yes, that looks correct.

19 Q And that's, again, the second sentence
20 of the second paragraph of your report on the
21 first page?

22 A Correct.

23 Q Okay. Is TPS a self-described leading
24 risk management consulting firm relative to
25 renewable energy products, or did someone else

1 **classify TPS as that?**

2 A Well, you could ask our clients. Well,
3 I suppose it's -- it's -- it's both, our
4 clients, but also self-described, you said?
5 Self-described?

6 Q Yeah.

7 A It's both.

8 Q When you say, "leading," are you
9 referring to, like, how big the size is, the
10 market share of TPS? What are you saying when
11 you're saying, "leading"?

12 A Leading, I would say in terms of
13 experience. There is very -- there is not a lot
14 of people that have, you know, almost 30 years
15 of experience in renewable projects like I do.

16 Q Okay. What would you say is the
17 percentage of market share that TPS holds
18 relative to consulting on renewable energy
19 projects?

20 A You know what? I don't know. I -- you
21 know, I know we have some of the largest
22 renewable companies in the world that are our
23 clients, but I can't tell you what our market
24 share is. I don't -- I don't know that offhand.

25 Q Is TPS in the top 10% -- I'm sorry.

1 Scratch that.

2 Is TPS in the top ten largest consulting
3 firms by size in the U.S., relative to renewable
4 energy?

5 A No, no, not at all.

6 Q You know, I'm only saying this -- is
7 because I Googled risk management consulting
8 firms for renewable energy projects in the
9 U.S., and I got numerous pages of search
10 results. And I kind of stopped, after Page 12,
11 trying to search for TPS, and I didn't find it.
12 Is that at all -- does that seem about right;
13 there's that many firms in the industry?

14 A You know what? I -- I have no idea. I
15 -- you know, without knowing who you were --
16 what kind of companies you were looking at, I --
17 I don't know, yeah.

18 Q Okay. How many employees does TPS
19 currently have?

20 A We have 14.

21 Q 14?

22 A Uh-huh.

23 Q Let me rephrase that. How many
24 employees does TPS have that is -- does not
25 include you or your family members?

1 A Oh, does not include me or family
2 members? I would say maybe four.

3 Q I'm sorry. Does not include family
4 members?

5 A Does not include family members, I would
6 say maybe about four.

7 Q Okay. You indicate in your report, I
8 have seen --

9 MR. ASHWORTH: Scroll down a little bit
10 more. I'm sorry, it's right there. That's
11 fine.

12 Q (By Mr. Ashworth) It says, "Centera" --
13 kind of towards the top, that's fine. It says,
14 "Centera, together with TPS, is overseeing
15 development over ten gigawatts of energy
16 projects, including the 2.5 gigawatt tax equity
17 financing transaction that closed in April of
18 2020." First off, 10 GW, that does mean ten
19 gigawatts; is that correct?

20 A That does, yes.

21 Q Okay. How much of the ten gigawatts
22 would you say relates to wind energy projects?

23 A I would say well over half. I would say
24 well over half. I would also say, Stuart --
25 Stuart is your name?

1 Q Yes.

2 A Just for reference purposes, 13 -- about
3 13% of renewables is women, and --

4 Q Okay.

5 A -- predominantly, those are technical
6 jobs. So the percentage of companies that have
7 women ownership, women on the board, women
8 ownership is even smaller than that.

9 So if you're looking to compare us in
10 the industry, you're going to have a hard time
11 doing that, because women represent -- and
12 especially female-owned businesses like mine
13 that are private, a very -- are very limited in
14 the renewable business, which is why we're a
15 little bit of an anomaly in terms of who we are
16 and in our role, in that we represent so many of
17 the major renewable companies in the world, one
18 of which is NG.

19 And I'm sure if you did research, you
20 saw that they're a very formidable, you know,
21 company. We worked on seven of the 11 projects
22 that comprised that financing, most of which
23 were wind. I would say because wind has been
24 around longer in terms of a renewable resource,
25 that most of that ten gigawatts you'll find is

1 going to be wind -- will be wind.

2 Solar really has only been predominant
3 probably since maybe 2007, 2008, if that helps
4 you.

5 Q Sure, no, I appreciate that. Let me
6 pull up another exhibit. One second.

7 MR. ASHWORTH: Mary Kathryn, do you know
8 what exhibit number we left off with? I forgot
9 to write it down.

10 MS. NAGLE: I believe the last exhibit I
11 entered was 38.

12 MR. ASHWORTH: Okay. I didn't know if
13 it was 37 or 38.

14 MS. NAGLE: Yeah, 38.

15 Q (By Mr. Ashworth) I'm going to show
16 what you I'm going to mark as Exhibit Number 39.
17 I'm sorry. 38.

18 THE REPORTER: 39.

19 MS. NAGLE: 39.

20 MR. ASHWORTH: Exhibit 39?

21 MS. NAGLE: Yes.

22 Q (By Mr. Ashworth) This is -- I pulled
23 from your website, and it's a project list. On
24 the second page -- first off, this is a project
25 list. You also carry a project list in your

1 expert report. Do you know if these project
2 lists, the one that I pulled from your website
3 yesterday is more current than what is in your
4 report?

5 A I want to say the one in my report, in
6 my expert report is going to be more current.

7 Q Okay.

8 A Than the one on the website.

9 Q Okay.

10 (Discussion off the record)

11 Q (By Mr. Ashworth) On this project list
12 that I pulled from your website, it shows that
13 your presence -- it lists 6,000 plus wind
14 megawatts developed that translates to six -- to
15 approximately six gigawatts; is that correct?

16 A Right.

17 Q And earlier I think you said that there
18 was more than -- more than half of your ten
19 gigawatts is -- represents wind?

20 A Right.

21 Q Okay. Earlier you testified that TPS
22 is, you know, a risk management consulting firm
23 that specializes in financing of renewable
24 energy. I wasn't quite clear any the earlier,
25 but I just want to make sure I understand what

1 TPS does or at least what it specializes in.

2 Is it your testimony that TPS consults
3 with companies when it comes to financing of
4 renewable energy sources, financing them; is
5 that correct?

6 A Finance -- so -- so we specialize in
7 helping companies prepare their projects for
8 financing. We do a lot more work than that. We
9 do site acquisition work, and we basically do
10 full spectrum work across all real estate and
11 title. So -- but our specialty is finance, if
12 that makes sense.

13 So if you have a project and you bring
14 me a lot of project assets, then we can help you
15 assemble all those assets and -- for a
16 particular project and get that prepared for
17 financing due diligence. Does that kind help to
18 answer that?

19 Q That does. So I guess in terms of that,
20 you would work with a client to prepare the
21 paperwork for them to get their financing stuff;
22 is that correct, as far as the process?

23 A Part of the process, correct.

24 Q When the project is financed and during
25 the construction phase, TPS doesn't oversee the

1 project, does it, at that point?

2 A We don't oversee the project. We may be
3 involved in certain phases of the project when
4 it gets into construction. It just depends on
5 the nature of the financing and if there's --
6 you know, so it depends on the nature of the
7 financing to how much we get involved during
8 construction.

9 Q Okay. TPS wouldn't act as a general
10 contractor during construction, would they?

11 A No, we would not, no.

12 Q Okay. What aspects would TPS be
13 involved with during the construction phase?

14 A We would be coordinating between the
15 construction team and the ALTA survey team, and
16 a lot of times maybe the boots on the grounds in
17 terms of what's happening in the field. A lot
18 of times when you're in construction, things can
19 change, and so we're going to be helping to
20 coordinate that and make sure if the arching
21 here that happened to the project, be it the
22 design or something in the field, that we're
23 apprised of that. We make sure that -- you
24 know, if an easement gets moved, for instance,
25 that it's still within the boundaries of the

1 leasehold estate, make sure it's still subject
2 to all of the -- of the debt security documents.

3 If -- depending on the nature of the --
4 of the loans that secure the construction, if
5 there's different date down requirements for the
6 title, then we'll be involved in that. So our
7 -- certainly our role is much more active
8 leading up to the start of construction, and we
9 -- but we're kind of -- we have a seat at the
10 table, in terms of just monitoring and making
11 sure that, at least from the standpoint of any
12 crossing agreements or any different agreements
13 that were agreed to, coordination with
14 landowners, that kind of thing, a lot of times
15 we're working on that during construction.

16 Q Okay. So TPS would be more busy in the
17 steps leading up to construction, and then they
18 have some involvement, depending on the project,
19 during construction; is that correct?

20 A Correct.

21 Q And if they were to be involved during
22 the construction -- I'm sorry. Scratch that.

23 The instances when TPS would be involved
24 during the construction phase, that's a small
25 part relative to what TPS does; is that correct?

1 A Generally speaking, yes.

2 Q Okay. Would you hold yourself out to be
3 an expert in the industry when it -- in regards
4 to overseeing the construction phase of
5 renewable energy projects?

6 A Overseeing the construction phase? As
7 it relates to my particular niche of work for
8 real estate and title, yes. I'm not going to
9 purport to be an expert on construction,
10 obviously, because I'm not an EPC, I'm not an
11 engineer. But as to my particular piece of
12 work, yes.

13 Q Would you hold yourself out to be an
14 expert in regards to whether permits or licenses
15 or leases are required to be obtained relative
16 to the construction phase of renewable energy
17 projects?

18 A As it relates to the real estate and
19 title, generally, yes.

20 Q Okay. How would it relate to the title
21 issues?

22 A Well, normally, we are -- part of the
23 work that we do is to obtain all the different
24 title reports for a particular project. So if
25 it's a wind project, in this case, you've got

1 about 8,000 acres, I believe. We work on some
2 wind projects that are 25,000 acres, for
3 instance, so we will look at all that title
4 work. We prepare schedules, and then we make
5 sure that, you know, we interface with the title
6 company, with the lenders. Basically all the
7 different exceptions have to be addressed in
8 some form for the financing.

9 So by saying some form, there's either
10 some kind of a document or some kind of coverage
11 that happens, so we maintain and monitor all
12 that --

13 Q Okay.

14 A -- respect, yes.

15 Q Would you hold yourself out as being an
16 expert relative to determining whether or not a
17 lease or permit is required to be obtained
18 relative to a wind energy project?

19 A For real estate and title, yes.

20 Q Okay. You believe that if a lease is
21 needed or a permit is needed relative to land
22 title, you would be an expert into -- in the
23 determination whether one's needed or not?

24 A Yes.

25 Q Okay. Would you equate the need to

1 obtain a mineral lease in this instance -- have
2 anything to do with title review that you would
3 be doing?

4 A Yeah, I mean, I think you're -- you're
5 certainly going to be looking at the fact that
6 there's a severance on -- of the mineral estate
7 and understanding what that is. And then
8 there'll be some kind of an analysis done as to
9 what needs to happen. I think, you know, as I
10 mentioned earlier, I'm not accustomed to seeing
11 leases. Normally, there would be some kind of a
12 surface use agreement or some kind of an
13 accommodation agreement or some other kind of
14 agreement that would be negotiated.

15 I've not seen leases negotiated, per se,
16 for mineral estates, just because I think also
17 from a financing standpoint, any time there's
18 any lease other than wind energy, then we have,
19 typically, a lender issue; right? So if I have
20 some obscure -- if there's a lease for pasture
21 negotiations -- okay? -- I'm going to have to
22 explain that to my lender, and I'm going to have
23 to explain how that's not an issue.

24 Lenders are not used to seeing leases,
25 because their go-to position is, it's going to

1 interfere with the project; right? So they're
2 concerned about that. So from my standpoint,
3 I'm not going to negotiate a lease, because I
4 know a lease is much more difficult to get title
5 insurance over, to negotiate with my lender.

6 So I am going to negotiate something
7 that's more customary in terms of curative
8 documents. And I've talked a lot about, you
9 know, subordinations, crossing agreements, or
10 crossing permits, and those kinds of things. I
11 think when it comes to financing, party --
12 financing parties are accustomed to seeing
13 those, and so it's much easier to get everyone
14 comfortable with that.

15 So I wouldn't necessarily go to a lease,
16 because I know a lease is -- our lenders are
17 maybe not necessarily going to be in favor of
18 that, especially if it relates to minerals and
19 they're accustomed to seeing different
20 documentation.

21 Q Okay. I don't think that's particularly
22 responsive, but let me reask it this way.

23 Relative to this case, would you hold
24 yourself out to be an expert to opine as to
25 whether a lease was or was not needed under the

1 facts and circumstances in this case?

2 MS. STEVENSON: Object to form.

3 THE WITNESS: Yes, I would say yes.

4 Q (By Mr. Ashworth) You are an expert;

5 your opinions are authoritative in this case.

6 Is that your opinion as to whether or not a

7 lease should be -- a mineral lease should have

8 been obtained?

9 A As to my title curative background, yes.

10 Q Okay. Have you ever done work for any
11 of the defendants, and that is Enel Green Power
12 North America, Enel Kansas, or Osage Wind? Have
13 you ever done any work for them?

14 A Other than the work here, no.

15 Q Okay. And, you know, just for the
16 purposes of your deposition, I may collectively
17 refer to the defendants as Enel Green and vice
18 versa. Would that cause any confusion to you,
19 and would you understand if I say, "Enel Green,"
20 I'm really referring to really the defendants?

21 A Okay. Right. No, that's not a problem.

22 Q Okay. What do you know about Enel
23 Green?

24 MS. STEVENSON: Before -- I did want to
25 let you know that our lunch did arrive, so if

1 you want to come to a stopping point, that would
2 work (inaudible).

3 THE REPORTER: I'm sorry. I didn't hear
4 the last part.

5 MR. ASHWORTH: Let me finish this --
6 sure. Let me finish this last question, then we
7 can go on a break.

8 THE WITNESS: Okay.

9 Q (By Mr. Ashworth) Ms. Centera, what do
10 you -- what do you know about Enel Green?

11 A I know that they develop renewable
12 projects across the U.S., similar to a lot of
13 the other parties that we work with or that we
14 talk to.

15 Q Do you know anything about their market
16 share in the U.S.?

17 A I do not, no.

18 Q Do you know -- I'm sorry. Were you
19 finished?

20 A (Nods head)

21 Q Do you know anything about how big they
22 are in terms of, you know, are they a big player
23 in the energy -- renewable energy sector?

24 A Well, I'm not really sure what you mean
25 by "big," but no, I don't know.

1 Q Do you know if they're in the top ten
2 renewable energy companies?

3 A I wouldn't be surprised, but I don't
4 know that for a fact.

5 Q Okay. Your -- TPS isn't a leading risk
6 management company in the renewable energy
7 sector, and it's your opinion you don't know --
8 you wouldn't be able to estimate or give a basis
9 of how big Enel Green is in terms of the
10 industry; is that correct?

11 A I'm -- so which one are you asking me?
12 I'm sorry. Are you asking me about my company,
13 or are you asking me about Enel?

14 Q No, I just -- you know, expecting that
15 if you were to hold yourself out as a leading
16 risk management consulting firm in the renewable
17 energy field, I just would assume you-all would
18 kind of have a basis or knowledge of the players
19 in the industry, and I assume that you don't; is
20 that correct?

21 MS. STEVENSON: Form.

22 THE WITNESS: Well, I didn't say that I
23 don't know all the players in the industry. I
24 certainly do. I mean, I -- I know our client
25 base. Do I know all the -- you know -- you

1 know, you're asking a difficult question, just
2 from the standpoint that, you know, renewable
3 companies have different presences in different
4 markets, you know.

5 Enel, I believe, focuses primarily on
6 wind power and -- at least that's my
7 understanding. And many companies for
8 diversification have moved over to solar. And
9 so as far as I know, I think Enel is still
10 primarily in the wind space.

11 So from that standpoint, I think they
12 have kind of an interesting business model, you
13 know. But I don't have to know -- in order to
14 be a risk expert, you know, I'm not sure that I
15 need to know, you know, what their -- you know,
16 what their market share is. I mean, the way
17 these projects are financed, all these projects
18 are -- you know, most all of them are financed
19 on a non-recourse basis.

20 So what that means is that there's
21 recourse only to the projects, and that's why
22 the financing is so important. Because if
23 you're a lender and you're counsel representing
24 the lender, the only rights that you're going to
25 have to be able to enforce against are against

1 the project.

2 So, certainly, to the extent that a
3 company might be large or small, is going to be
4 a factor in some of these -- of these projects.
5 But more importantly is going to be the -- the
6 project itself and the basis of the project
7 itself. And that's why I mentioned earlier
8 that, you know, the parameters of the project
9 are important, understanding the specific
10 project parameters.

11 So, now, if you're a large player, can
12 you negotiate a better deal and -- there's a lot
13 of things that are going to happen there.
14 You're going to get pushed around a lot more if
15 you're smaller.

16 So I see a lot of different things. We
17 work with some of the largest companies in the
18 world, many of which are disclosed on our
19 website, so -- but I think that's really, you
20 know, there's a lot of different factors that
21 impact companies, their business model, how they
22 finance projects, all that kind of thing.

23 I haven't worked with Enel, so I'm not
24 privy to all those different details.

25 MR. ASHWORTH: I think we're at a great

1 stopping point for a lunch. Do we want to do 30
2 minutes, Mary Kathryn?

3 MS. NAGLE: That works for me or, Sarah,
4 did you want more time?

5 MS. STEVENSON: Can we do 45?

6 MS. NAGLE: That works for us.

7 MR. ASHWORTH: Okay. 45 minutes.

8 (Lunch break at 1:39 p.m., resumed at 2:28 p.m.)

9 Q (By Mr. Ashworth) Ma'am, we're back on
10 the record. We took a 45-minute break, lunch
11 break, and I understand you already had lunch
12 delivered.

13 During the break, did you have a time to
14 consider your previous testimony today and want
15 to make any changes?

16 A Yeah, I'm not sure what you mean.

17 Q Sure, sure.

18 A Yeah, I mean, not -- not -- not at this
19 stage, that I'm aware of.

20 Q Sure. During the break, did you speak
21 with counsel for the defendants about your
22 testimony?

23 A Yes.

24 Q What in particular about your testimony
25 was discussed?

1 MS. STEVENSON: I'm going to object to
2 the extent it seeks attorney-client privileged
3 information and direct the witness not to
4 respond.

5 Do you want to rephrase your question?

6 Q (By Mr. Ashworth) You can go ahead and
7 answer.

8 MS. STEVENSON: I directed her not to
9 respond with attorney-client privileged
10 information.

11 MR. ASHWORTH: I'm sorry.
12 Attorney-client privileged?

13 MS. STEVENSON: That's right.

14 MR. ASHWORTH: I'm sorry. I didn't -- I
15 didn't hear. I don't know if the court reporter
16 heard it either. What privilege are you
17 asserting?

18 MS. STEVENSON: The trial preparation
19 protection for communications between the
20 attorney's counsel and -- or between -- excuse
21 me -- between the parties' counsel and an expert
22 witness would be -- that are retained by party
23 for litigation. So I'm directing her not to
24 discuss our specific communications about her
25 testimony.

1 MR. ASHWORTH: Sure. During -- when the
2 deposition starts and until it ends, that, you
3 know, objection does not -- it doesn't exist.
4 It's waived. When it -- communications --
5 unless the report -- involves her actual report
6 and the preparation of the report, you know --
7 but we will -- I guess we'll continue, and I
8 guess we can take this up with the court, and to
9 the extent we need to reopen this so I can reask
10 that question, that's fine.

11 And I'm sure the defendants wouldn't
12 mind paying that -- those fees.

13 Q (By Mr. Ashworth) Ma'am, during the
14 break, the lunch break, our 45-minute break,
15 even though I'd asked for 30 minutes, is there
16 anything that was discussed that would cause you
17 to want to change your testimony that you
18 previously testified to today?

19 A No.

20 Q Okay. Have you spoken with any of the
21 employees of Enel Green before?

22 A Have -- before ever? Ever, you mean?

23 Q Yeah, before today.

24 MS. STEVENSON: And I'm going to object
25 to the form of this question, because Enel Green

1 is a defendant. Are you -- which specific --

2 MR. ASHWORTH: Okay. We're only doing
3 -- okay. Ms. Stevenson, we're only doing,
4 object to the form of the question. If you
5 would like to add a narrative, I will call a
6 judge. Okay. That's clearly stated that it is
7 object to the form only, and that's it. We'll
8 move on.

9 MS. STEVENSON: I'll object to the form.

10 Q (By Mr. Ashworth) Okay. Ms. Centera,
11 you can go ahead.

12 A I'm sorry. Could you reask the
13 question, please?

14 Q Sure. Have you ever spoken with an Enel
15 Green employee before your deposition today?
16 And that's Enel Green North -- Power North
17 America, Enel Kansas, Osage Wind, just Enel
18 Green, in general.

19 A Not that I'm aware of, no.

20 Q Okay. Have you or TPS ever corroborated
21 on a project with Enel Green before?

22 A No, we have not.

23 Q Have you ever applied for or attempted
24 to solicit business from Enel Green before?

25 A Gosh, myself in particular, I don't

1 believe so, no.

2 **Q What about TPS?**

3 A You know, it's possible. I mean, we
4 send out emails to, you know, people all across
5 the industry, so it's possible, marketing
6 emails. So it's possible someone on the
7 marketing team has sent out some email at some
8 point. I can't point to anything in particular.

9 **Q Is there any possibility that TPS will**
10 **solicit business from Enel Green in the future?**

11 A I suppose it's possible, sure.

12 **Q Is there any desire that -- scratch**
13 **that.**

14 Is it your belief that providing -- that
15 by -- scratch that.

16 Is it your belief that by providing
17 favorable testimony to Enel Green, that TPS may
18 get a contract with TPS -- I'm sorry -- with
19 Enel Green in the future?

20 MS. STEVENSON: Object to form.

21 THE WITNESS: No, no. We have plenty of
22 clients and lots of business. I haven't -- I've
23 built my business on integrity, and that's why I
24 have the business that I do.

25 **Q (By Mr. Ashworth) Okay. Jennifer**

1 Purczynski -- I don't know if I'm saying that
2 correctly. Jennifer Purczynski,
3 P-u-r-c-z-y-n-s-k-i, she is a senior director
4 for project transactions for TPS; is that
5 correct?

6 A She is, and, congratulations, I think
7 you're probably one of the only people who's
8 ever been able to pronounce her name, the
9 first --

10 Q I can tell you, if I did it correct,
11 it's by mistake. It's definitely not based on
12 any knowledge I have. Is she the second in
13 command of TPS?

14 A Second in command? I'm not sure what
15 you mean by that.

16 Q Sure. I'm going to pull up a document
17 that I will mark as Exhibit Number 40. This is
18 something that I pulled off from your website.
19 It shows a list of employees and also a list of
20 experts on the -- going down under Experts, it
21 lists you first and then Jennifer Guthrie
22 Purczynski. And I didn't know if that was just
23 in order of seniority of the company or who's
24 over it, but she's listed as second.

25 A Yeah, you know, it's -- it doesn't have

1 any particular meaning in terms of -- and your
2 question was second in authority?

3 Q Uh-huh.

4 A So, no, I think she's -- she's one of
5 the experts that works for the company. She
6 certainly has a long history in renewables.

7 Q Sure. Jennifer used to work for Enel
8 Green; is that correct?

9 A She did, yes.

10 Q Okay. She started working for TPS in
11 2018?

12 A 2018? I thought it was -- well, I
13 thought it was before that, but -- yeah, I
14 thought it was before that, actually, but it
15 could be 2018.

16 Q Sure. Let me pull up another exhibit.
17 I will look at that later. Has Jennifer -- do
18 you know if Jennifer has spoken with anyone from
19 Enel Green about the Osage Wind project?

20 A She has not.

21 Q Okay. I'm going to pull up your expert
22 report, and, in particular, I'm going to look at
23 the page starting with your CV, and that's going
24 to be page -- what is that number, page number?

25 (Discussion off the record)

1 Q (By Mr. Ashworth) As that's being
2 pulled up, when did you graduate from University
3 of Redlands?

4 A 2003 -- 2002, 2003, something like that.

5 Q When did you obtain your paralegal
6 certificate from University of San Diego?

7 A Oh, I want to say, hmm, like, 1990,
8 something like that.

9 Q In your work history, you listed that
10 you worked for Jennings, Englestrand [sic]
11 Henrikson as a single -- I'm sorry -- senior
12 paralegal from 1989 to 1983 [sic]; is that
13 correct?

14 A Yeah, 1993, I think you meant to say;
15 right? Yeah.

16 Q Sorry. Did you work in real estate or
17 title before that?

18 A I did. Many years ago I worked for a
19 firm that did foreclosures, and I also worked
20 for a law firm in San Jose, California, prior to
21 1989 when I moved to San Diego.

22 Q And you would consider that to be work
23 -- an experience in real estate and title?

24 A Yes, I would. Corporate with a
25 generalist attorney, so we did a lot of

1 different things in kind of the general business
2 area in real estate and title.

3 Q Okay. Going on the same page, a little
4 bit up, earlier you testified about your work
5 with -- or relative to a BIA lease negotiation,
6 I think you had talked about. Do you recall
7 that?

8 A Yes.

9 Q And you had indicated that, ultimately,
10 the project fell through, but you didn't get
11 past the negotiation phase; is that correct?

12 A Correct. The project was stopped, yes,
13 so we didn't continue --

14 Q I believe you indicated that it was
15 going to be in the northwest.

16 A Yeah, somewhere in the midwest, I think,
17 is probably more likely, in the midwest, not
18 really --

19 Q Do you know when that would have --
20 sorry. Sorry to interrupt. Go ahead.

21 A Yeah, I'm sorry. I was just saying more
22 in the midwest, not in the northwest.

23 Q Okay. Approximately what year would
24 that have been in?

25 A I think I said it was in 2013, something

1 along those lines, 2013, maybe 2014.

2 Q Okay. And do you know what tribe was
3 involved?

4 A I do not recall the tribe. I do not.

5 Q Okay. Do you know what company was
6 involved, wind developer that was involved?

7 A I do not.

8 Q Were you retained by the wind developer
9 or the tribe?

10 A We were actually retained as a
11 subcontractor to the person -- to the primary
12 company that was doing the project work, so they
13 retained us as an expert on the real estate and
14 title negotiations, because that's not something
15 that their firm does. So they brought us in to
16 help them specifically in that area.

17 Q Okay. You were brought in -- you were
18 brought in to do the title and -- title
19 negotiations and the real estate -- I'm sorry --
20 negotiations? Did I read that right -- did I
21 hear that right?

22 A Well, in this particular case, we were
23 doing the lease negotiations --

24 Q Okay.

25 A -- in this case for the site control.

1 Q How do you nego- -- okay. I take that
2 back.

3 Who would the lease have been from?
4 Would that have been from the tribe or from BIA?

5 A Well, the lease was going to be with the
6 tribe, but subject to the approval of BIA,
7 because I understand that all the leases have to
8 -- any -- any long-term leases that are entered
9 into of this kind have to be approved or subject
10 to approval of the BIA.

11 Q When you say, any leases of this kind,
12 what kind of leases are you referring to?

13 A Site control leases, so -- which are
14 typically longer-term leases. So they would be
15 subject to the approval of the BIA.

16 Q Okay. So site control leases, we're
17 talking about surface leases; is that right?

18 A Correct, surface leases.

19 Q Okay. Do you know if -- were mineral
20 leases -- I'm sorry. Was the mineral estate
21 severed in that instance?

22 A No, no. The tribe controlled the
23 mineral estate and the surface.

24 Q Okay. So the lease -- any negotiation
25 of the lease, had it actually gone through, it

1 would have been for that section of the property
2 for the tribe in its entirety?

3 A Correct, for the surface, yes.

4 Q You previously indicated earlier in the
5 deposition that you're not an expert as to the
6 valuation of mineral resources; is that correct?

7 A Correct. I don't typically value
8 mineral estates as part of my work, that's
9 correct.

10 Q Okay. And even if you do, you don't
11 consider yourself to be an expert in that area?

12 A I mean, I think if we're talking about
13 the value of a mineral estate, normally, I would
14 leave that to someone who is an expert in that
15 area, specifically of the value of the minerals,
16 per se.

17 So if I'm thinking about the value --
18 and I think I talked about the fact of different
19 parameters in a project, so understanding -- if
20 that's a question as part of the negotiations,
21 what is the -- what is the extent of the mineral
22 estate, you know, what is the makeup of the
23 mineral estate, what could be the potential
24 value of the mineral estate, then I'm not -- I'm
25 not an expert in trying to value a mineral

1 estate or determine -- you know, taking a look
2 at, you know, geology and making a determination
3 on what is the compositive minerals and all
4 that. So I don't try to opine on that. I'm not
5 a min- -- I'm not an expert in that area.

6 **Q Sure. Do you hold yourself out to be an**
7 **expert in regards to the calculation of damages**
8 **in relations to when Indian minerals are taken**
9 **without permission?**

10 MS. STEVENSON: Object to form.

11 THE WITNESS: I don't, because it hasn't
12 really come up. It hasn't come up. I mean,
13 that's -- that's not something that comes up in
14 our business, so I wouldn't hold myself out as a
15 -- as an expert in that.

16 **Q (By Mr. Ashworth) Sure. Would you hold**
17 **yourself out as being an expert in regards to**
18 **calculation of damages in general that involves**
19 **the taking of mineral resources without**
20 **permission?**

21 MS. STEVENSON: Object to form.

22 THE WITNESS: I think that's a very
23 unique aspect that is the subject of this case,
24 so it -- you know, damages doesn't come up, per
25 se. It doesn't come up in the negotiations. I

1 think I mentioned the types of agreements that
2 I'm accustomed to negotiating, surface use
3 agreements and other accommodation agreements,
4 but in terms of damages, that's not normally
5 something that I'm going to try to opine on, per
6 se.

7 I think what I look at is -- and what I
8 did here is to look at what's customary in terms
9 of compensation. And so I think that's -- and
10 maybe that's a real finer point, but that's
11 really what I looked at is, what is compensation
12 in the ordinary course of these negotiations.
13 And I think that's what we're looking at here,
14 what would have been a negotiation for a -- for
15 a mineral lease.

16 And that's what I'm accustomed to
17 negotiating is that kind of compensation, or
18 maybe it's a matter of semantics, but I don't
19 think of it in terms of damages.

20 Q (By Mr. Ashworth) Sure. And I'll get
21 to compensation as a separate issue, because I
22 think compensation is before the taking, at
23 least in my opinion. Damages is in regards to
24 the taking without permission.

25 So it's my understanding, just from your

1 long answer, was that you are not -- you don't
2 consider yourself to be an expert in regards to
3 the calculation of damages as to when minerals
4 are taken without permission?

5 MS. STEVENSON: Object to form.

6 Q (By Mr. Ashworth) Is that -- is that
7 correct?

8 MS. STEVENSON: Object to form.

9 THE WITNESS: Correct.

10 Q (By Mr. Ashworth) Okay. I'm trying to
11 understand, what is it that you were retained to
12 do as an expert in this case. I'm going to
13 refer you to your expert report. In particular,
14 I'd like to look at Page 5. Actually, we'll
15 start with Page 4, the very bottom of your
16 expert report. Right there.

17 Here at the bottom, at this bottom
18 paragraph, it says that you have been asked to
19 provide expert opinions in responses to two
20 questions. The first one is whether a
21 knowledgeable and experienced wind developer
22 would have reasonably anticipated that a lease
23 from a mineral owner would be required prior to
24 construction of the project. That's the first
25 part that you were required to give expert

1 opinion on.

2 The second is, if a wind energy
3 developer was clearly apprised, prior to
4 construction commencing, that a mineral lease
5 was required to engage in ordinary turbine
6 foundation excavation for a wind project, would
7 the developer have practical and effective
8 alternatives to using minerals so mined, end
9 quote, from the mineral estate in the
10 construction of the foundation for the project.

11 Those are -- is this the two areas that
12 you were retained to give expert testimony on;
13 is that correct?

14 MS. STEVENSON: Object to form.

15 THE WITNESS: We were asked to answer
16 these two questions, together with looking at
17 the FTI report.

18 Q (By Mr. Ashworth) Okay. Well, I'm just
19 trying to see. It states in your report -- it
20 only says that these are the two areas that
21 you're giving expert opinions as to, and your --
22 it's your testimony that you're also giving
23 expert opinions as to the FTI report; is that
24 correct?

25 A Say that again. I'm sorry.

1 Q Sure. I'm trying to understand what,
2 exactly, you've been retained to give expert
3 opinions as to. Your report only indicates that
4 there's two areas that you're giving expert
5 opinions as to, but it seems to me that it's
6 your testimony today that you're also giving an
7 expert opinion as to the FTI report.

8 MS. STEVENSON: Object to form.

9 THE WITNESS: I think that's -- I think
10 we're -- we're responding to the FTI report, and
11 we're also answering these two questions.

12 Q (By Mr. Ashworth) Sure. Are you
13 responding to the FTI report in a capacity as an
14 expert, or are you just making comments as to
15 it?

16 MS. STEVENSON: Object to form.

17 THE WITNESS: I'm responding to the
18 report as an expert.

19 Q (By Mr. Ashworth) Okay.

20 (Discussion off the record)

21 Q (By Mr. Ashworth) And I say that
22 because here in the last sentence --

23 (Discussion off the record)

24 Q (By Mr. Ashworth) The
25 second-to-last-sentence of this page, it says,

1 "I have been asked to comment specifically on
2 the contents of the FTI report with regard to
3 the reasonable standards and customs within the
4 wind industry -- wind development industry."

5 You know, I mention this because it says
6 you were asked to specifically comment versus to
7 give expert opinions. And that's why I wanted
8 to, you know -- I guess there's some confusion
9 on me, because it seems like now you're going to
10 give expert opinions as to the FTI report.

11 MS. STEVENSON: Object to form.

12 Q (By Mr. Ashworth) So my question is,
13 you're giving more than just comments --
14 correct? -- as to FTI's report?

15 A Yes.

16 Q Okay. And it's my understanding that
17 your criticism of the FTI report is that the
18 calculation of damages by Mr. Hazel is
19 unreasonable; is that correct?

20 A On the basis of using the payments in
21 the wind energy lease, yes.

22 Q Okay. And in fact -- scratch that.

23 And it's my understanding that you
24 aren't able to say what reasonable damages would
25 be in this case; is that correct?

1 A I -- I'm not sure what you mean by that.

2 Q Sure. It's your opinion, when we go to
3 trial -- scratch that.

4 When we go to trial, it's going to be
5 your testimony to the court that based on your
6 expert opinions and your expert background that
7 the measure of damages or the calculation of
8 damages by Mr. Hazel is unreasonable; correct?

9 A Correct.

10 Q And that it's also going to be your
11 expert opinion to the court that, when asked,
12 what are the reasonable calculation of damages,
13 your response would be, I don't know; is that
14 correct?

15 MS. STEVENSON: Object to form.

16 THE WITNESS: Well, I think what I said
17 is that I am -- I'm -- maybe it's a matter of
18 disagreement over what "damages" means and
19 "compensation." So I am disagreeing with the
20 formula that is used in the FTI report for
21 calculating the compensation. When I -- when I
22 think of damages, I'm thinking of damages to the
23 surface. Perhaps I'm thinking of it differently
24 than you are. What I'm -- what I'm disagreeing
25 with is the calculation and the fact that the

1 entirety of the wind agreement, including all
2 the compensation, operating fees, and what have
3 you, are used in the basis of that calculation
4 for the compensation.

5 So I guess maybe we don't agree on what
6 constitutes damages, because, you know -- and,
7 again, I'm not an attorney, so maybe I'm --
8 maybe I'm misunderstanding. But I'm -- that is
9 what I disagree with is the compensa- -- the way
10 that the compensation is being calculated.

11 **Q (By Mr. Ashworth) Okay. Well, let's --**

12 **A** You know. Anyway...

13 **Q Well, how do you believe it should be**
14 **calculated?**

15 **A** I should -- I believe it should be
16 calculated on the basis of any other permit or
17 any other agreement that would customarily be
18 granted for this type of activity in Osage
19 County. I think we looked at that and we said
20 there's a lot of other comparable documentation
21 out there to support that. I don't believe that
22 there's documentation in Osage County that
23 supports using all the different payments under
24 the wind lease as the basis for the
25 compensation. That's what I'm -- that's,

1 fundamentally, what I am disagreeing with in the
2 FTI report.

3 Q Okay. Earlier you testified that you
4 read part of the Tenth Circuit court opinion in
5 this case, so I assume you haven't read the part
6 where the defendants have been found liable in
7 this case, and the trial's really going to be on
8 damages. And that's, you know, what the court's
9 going to order to compensate the defendants for
10 what was done. Whether that is to have the
11 towers removed or what, my -- I'm trying to
12 understand, are you the expert for the
13 defendants to tell the court how much should be
14 paid or what should be done to, I guess, remedy
15 or compensate for the minerals that were taken?
16 Is that going to be you?

17 MS. STEVENSON: Object to form.

18 THE WITNESS: I -- I think you have
19 several other experts that are speaking
20 specifically to the value. I think you have Mr.
21 Pfahl, who spoke specifically to the value and
22 the comparable nature of the damages in Osage
23 County. I think my role is to talk about what's
24 customary and typical in the renewable energy
25 industry, and that's what I'm speaking to. I'm

1 speaking on the basis of all my experience
2 negotiating many different kinds of crossing
3 agreements and permitting -- permits and that
4 type of thing for title in many other
5 jurisdictions and what happens.

6 And that's the basis for my -- so when
7 we -- when you go back and look at all those
8 different projects, is the compensation based on
9 the wind energy leases and all the different
10 payments that are set forth in the wind energy
11 lease. And I'm here to testify that that's not
12 the case.

13 Now, there's other people that are, by
14 far, the experts on trying to, you know, opine
15 an all the specific damages. But what I'm here
16 to talk about is the nature of that calculation
17 and what is customary on the basis of my many
18 years of experience.

19 Q (By Mr. Ashworth) I have so many
20 questions, follow-up questions because of that
21 answer. I'm trying to think of where to start.

22 My question to start would be, if you
23 believe that, you know, you're going to be the
24 expert at trial to say what is customary in the
25 industry to compensate a mineral rights --

1 mineral estate owner for when a mineral lease
2 was not taken -- sorry, was not negotiated and
3 obtained and the minerals were taken -- it's
4 your testimony to the court -- so that was a
5 long, rambling question. Let me start over
6 again. Sorry about that.

7 Is it going to be your testimony to the
8 court that, as an expert with experience within
9 the industry, that you're going to opine as to
10 what compensation is reasonable for when
11 minerals are taken without permission relative
12 to a wind energy development project; is that
13 correct?

14 MS. STEVENSON: Object to form.

15 THE WITNESS: I think I'll be testifying
16 -- if there is a trial, then I will be
17 testifying on the basis of what's set forth in
18 that Tenth Circuit opinion that said that the
19 crushing of the minerals and that kind of thing
20 constituted mining. So I will be testifying on
21 that -- on that basis, on the basis of my
22 industry experience working with mineral
23 negotiations. So that will be the basis of my
24 testimony.

25 Q (By Mr. Ashworth) Sure.

1 MR. ASHWORTH: And I would object to
2 that as nonresponsive and move to strike.

3 Q (By Mr. Ashworth) Let me reask that
4 question.

5 I'm trying to understand -- this is my
6 -- this probably will be my only time to speak
7 with you before trial, and I don't want to get
8 to trial and, all of a sudden, you tell the
9 court you've come up with a calculation that was
10 never previously disclosed to us.

11 But what I want to know is, is what
12 calculation -- based on your experience within
13 the industry, how, you know, you would
14 compensate minerals being taken from a mineral
15 estate owner without permission? How would you
16 calculate that?

17 MS. STEVENSON: Object to form.

18 THE WITNESS: I think in this case, you
19 know, if you're going to establish that
20 compensation, then you're going to have to look
21 at the other documents, as I said, in the county
22 that have already been used, the other permits.
23 So you're going to pay some kind of a nominal
24 amount. You're going to pay something -- I
25 think someone did some calculations, perhaps on

1 the amount of the limestone that was actually
2 manipulated for purposes of a foundation, so I
3 think they know that amount.

4 So I think you would be looking at that.
5 You would be looking at something based on what
6 a typical, you know, permit or a lease would
7 ordinarily be negotiated on for this three-month
8 period of time that the construction was
9 conducted.

10 Q (By Mr. Ashworth) Okay. And you base
11 that opinion based on your industry expert --
12 experience?

13 A Based upon my industry experience, yes.
14 If you go into a certain jurisdiction and you
15 are negotiating documents, permits, crossing
16 agreements, or whatever, then they are typically
17 negotiated based upon what's customary in that
18 state and county.

19 Q Okay. Now we're -- you're talking about
20 negotiations. I want to know about this
21 particular instance when minerals were taken
22 without permission, and it seems to me that
23 you're coming up with that opinion based on your
24 industry experience.

25 My question would be, it's my

1 understanding that you have never been involved
2 in a wind development project where a minerals
3 lease was required and not obtained; is that
4 correct?

5 MS. STEVENSON: Object to form.

6 THE WITNESS: Where there was mining
7 involved? If you're talking about mining, I've
8 worked on many, many lease negotiations.

9 Q (By Mr. Ashworth) Sure.

10 A With tribes and other types. But you're
11 talking about this particular case, where
12 there's an allegation around minerals being
13 mined. I've not negotiated that kind of lease
14 before, no.

15 Q Sure. And I think we can decide whether
16 we agree, whether the word "mined" or "mineral
17 development" should be used. But you've not had
18 any experience where a mineral lease was
19 required prior to beginning a wind development
20 project; correct?

21 A Typically, no, no, because there's not
22 going to be -- there's no mining that takes
23 place. So, normally, a mineral lease is not
24 going to come up, because you're not --

25 Q Okay.

1 A -- leasing the -- for -- you're not
2 going to be mining, so you're not going to
3 lease.

4 Q Sure. And that just makes it a little
5 bit more confusing for me as to -- it's your
6 testimony that you have never been involved in a
7 situation where a mineral lease was required,
8 yet you believe that, based on your experience
9 in the industry, you're going to tell the court
10 how compensation should be paid when a mineral
11 lease was not obtained.

12 A Well, I think we know that, even in the
13 FTI report, there's no basis for the calculation
14 of using the wind lease as the basis for the
15 compensation. I sat in on the deposition for
16 Mr. Hazel, and he's never worked on a single
17 project where that compensation was ever used or
18 ever at issue.

19 So this is a very unique case here
20 that's come up. I've been involved in plenty of
21 negotiations, but not in a particular fact
22 scenario that we're talking about here, where
23 there's an allegation of mining as a result of
24 construction and rocks being crushed and all of
25 that. That is a very unique case.

1 So I think, you know, there's not a
2 precedent for that, that I'm aware of. And with
3 Mr. Hazel's experience, who I think he has close
4 to the amount of years of experience that I do
5 in his work, which is many years, and he has no
6 comp for that either. So, you know, I think
7 across the board, as far as the experts, we both
8 agree that there's no precedent for the
9 calculation of these -- of this compensation.

10 **Q Sure. Your -- but when it comes to**
11 **trial, you're going to be basing your testimony**
12 **based off of your industry experience, when**
13 **you've already said that there is no experience**
14 **relative to the facts of this case; correct?**

15 A I will be basing it on all the
16 experience that I have negotiating many, many,
17 many agreements. But, you know, this is -- this
18 is definitely a different case with the facts
19 here, but people -- people ask me -- excuse me
20 for interrupting, but, you know, Stuart, people
21 ask me, have you worked in all 50 states? Okay?
22 I haven't worked in all 50 states yet. I've
23 worked in over 40 states, but I haven't worked
24 in all 50 states.

25 But I can tell you this. There is best

1 practices. There's ways that you work, and
2 there's best practices, and those apply across
3 the board. So, you know -- you know, I haven't
4 worked in all 50 states, but it doesn't mean
5 that the information is not correct or accurate
6 as to the industry experience.

7 Q Would you consider yourself to be an
8 expert as to the best practices that a renewable
9 energy developer should follow?

10 A As it relates to real estate and title
11 and my particular area of expertise, yes.

12 Q Would you -- in your experience as it
13 relates to real estate and title, would you
14 agree that one of the best practices to mitigate
15 risks by a renewable energy developer would be
16 to conduct comprehensive due diligence? Would
17 you agree with that?

18 A Yes, yes.

19 Q Okay. And part of the due diligence,
20 that would mean that a developer should try to
21 discover any potential risks and evaluate their
22 impacts to determine whether potential projects
23 would be a good investment for them; is that
24 correct?

25 A Yes.

1 Q Would you agree that part of due
2 diligence involves a review of permitting and
3 jurisdictional issues to determine site
4 feasibility? Would you agree with that?

5 A Yes.

6 Q Okay. Would you agree that, as part of
7 due diligence, involves compliance review to
8 ensure that a potential project adheres to
9 applicable regulations?

10 A Well, on the regulations part, I'm not
11 too sure about that. I'm not an attorney. But
12 certainly within my area of expertise, yes, I
13 think you want to make sure that you do all the
14 -- all the due diligence that you can. Comes to
15 the compliance part, that's up to the attorneys
16 to take a look at everything and ensure that
17 it's in compliance.

18 Q Okay. Would it -- would you agree that
19 due diligence would require compliance review?

20 A I don't understand the question. I'm
21 sorry.

22 Q Sure. We're talking about due
23 diligence.

24 A Okay.

25 Q Would you agree that one of the steps of

1 doing due diligence would be to have a
2 compliance review to ensure that there are any
3 -- to see if there are any potential regulations
4 or -- I'm sorry -- applicable regulations that
5 need to be adhered to?

6 A It typically happens in the projects,
7 yes.

8 Q Okay. And that would be part of due
9 diligence; correct?

10 A Yes, could be, yes. Probably is part of
11 it, yes.

12 Q So in doing due diligence, that could be
13 a step, or you don't know?

14 A Yes, it's probably one of the steps that
15 happens. Could be, yes.

16 Q Okay. And you would consider yourself
17 to be an expert in terms of best practices for
18 due diligence as it relates to real estate and
19 title; is that right?

20 A Yes.

21 Q Okay. Do you know if Enel Green did any
22 type of due diligence work before starting
23 construction on the subject project?

24 A You know, I -- no, I'm not sure what
25 took place. I didn't work on this project, so I

1 don't know.

2 Q But that's something that you would have
3 expected Enel Green to have done before
4 beginning construction?

5 A Yes.

6 Q Okay. Does TPS perform due diligence on
7 behalf of its clients (inaudible)?

8 THE REPORTER: What was the last part?

9 Q (By Mr. Ashworth) Does TPS do due
10 diligence for its clients if it's been retained
11 to do so?

12 A We do, yes.

13 Q Okay.

14 A We do.

15 Q And maybe to rephrase it this way, that
16 would -- doing due diligence for clients would
17 be one of the services offered by TPS?

18 A Right, for real estate and title, for
19 our particular -- there's a lot of different
20 pieces associated with projects, so, you know,
21 we're very specific to real estate and title,
22 but yes.

23 Q Okay. And if TPS had been retained by
24 Enel Green to provide risk management consulting
25 services relative to the subject project, that's

1 something that due diligence -- I'm sorry --
2 would have been one of the things that TPS would
3 have -- let me restart that. That was a
4 terrible question. I was thinking I could save
5 it.

6 If TPS was retained by Enel Green to
7 provide risk management services to -- or
8 relative to the subject project, is it your
9 belief that TPS would have advised Enel Green to
10 follow the best practices in the industry to
11 mitigate any potential risks associated with
12 renewable energy projects?

13 MS. STEVENSON: Object to form.

14 THE WITNESS: Yes, I'm sure we would
15 have done that, right. We have a protocol so...

16 Q (By Mr. Ashworth) Okay. Based on what
17 we know now on the Tenth Circuit opinion, do you
18 believe that Enel Green performed adequate due
19 diligence before beginning construction on the
20 subject project?

21 MS. STEVENSON: Object to form.

22 THE WITNESS: I think they did, based
23 upon what they knew at the time, yes.

24 Q (By Mr. Ashworth) Okay. And so based
25 on what they knew at the time, you believe that

1 they performed due diligence adequately;
2 correct?

3 A Yes.

4 Q What about -- is that a "yes"?

5 A Yes.

6 Q Okay. What about based on what we know
7 now?

8 MS. STEVENSON: Object --

9 Q (By Mr. Ashworth) Do you believe that
10 Enel Green would have performed adequate -- or
11 did perform adequate due diligence before they
12 began construction on the subject project?

13 MS. STEVENSON: Object to form.

14 THE WITNESS: You know, I'm trying to
15 comment on something I really don't know
16 anything about. I -- I can't really comment on
17 the totality of their due diligence. You know,
18 we have information about a very specific area.
19 There are very specific questions around this --
20 the tribal rights so --

21 Q (By Mr. Ashworth) Okay.

22 A -- you know, it wouldn't be correct of
23 me to try to comment on the totality of the due
24 diligence, because I really don't know. I
25 wasn't there. I don't know about that.

1 Q Sure. So you think it's inappropriate
2 for you to comment as to whether Enel Green did
3 proper due diligence, based on what we know now,
4 but you have no problems about opining that,
5 based on what was known at the time?

6 MS. STEVENSON: Object to form.

7 Q (By Mr. Ashworth) Is that correct?

8 MS. STEVENSON: Object to form.

9 THE WITNESS: I'm sorry. Could you
10 repeat the question? It's kind of a little --

11 Q (By Mr. Ashworth) Sure, sure. It seems
12 like you -- it's your opinion that Enel Green
13 did adequate due diligence based on the
14 information that they knew at the time; that was
15 your opinion. And when I asked based on what we
16 know now, do you believe that Enel Green
17 performed adequate due diligence relative to the
18 subject project, and then you said, well,
19 actually, you don't -- you're not able to
20 comment?

21 A Correct.

22 Q All right. What makes you able to
23 comment as to what you believe Enel Green knew
24 at the time versus what we actually know now?

25 A I think it's a great question, and I

1 think that I should correct what I said
2 previously and say that all I can really speak
3 to is this particular question. And, you know,
4 it's hard to -- I didn't look at any title work.
5 You know, I don't know about the totality and
6 all the history of this. All I know is where we
7 are now and what we have in terms of the finding
8 and that we now know there should have been a
9 lease.

10 Q Okay.

11 A So, you know, I -- I mean, I work on a
12 lot of projects, and when you're done with a
13 project and debrief the project, you're a lot
14 smarter and -- you know, across the board. You
15 probably go back, and perhaps you might do some
16 things differently. So I should qualify my
17 comment by saying that.

18 Q Okay. Do you believe that Enel Green's
19 review of permitting and jurisdiction issues
20 prior to construction was sufficient enough for
21 purposes of due diligence?

22 MS. STEVENSON: Object to form.

23 THE WITNESS: Yeah, I'm not going to
24 comment on the totality of the permitting,
25 because I -- I wasn't -- you know, I wasn't

1 involved in that, so -- so I can't comment on
2 that.

3 Q (By Mr. Ashworth) I'm sorry. You're
4 not able to comment as to the totality of
5 permitting?

6 A Right, because -- could you ask --
7 because you asked about the permitting and all
8 that; right? So you're asking about all the
9 different permits?

10 Q Sure. About the permits, yeah. Even to
11 rephrase that, do you believe that Enel Green's
12 review of licensing, leasing, permitting, and
13 jurisdictional issues prior to the construction
14 of the project was sufficient enough for
15 purposes of due diligence?

16 MS. STEVENSON: Object to form.

17 THE WITNESS: Yeah, that -- that's way
18 too broad. I have -- that's a huge -- you know,
19 it could be hundreds of documents. I have no
20 idea. You know, I --

21 Q (By Mr. Ashworth) Okay. Well, let me
22 make the question a bit less broad, and maybe
23 you'll be able to answer it. Do you believe
24 that Enel Green's review of regulations prior to
25 construction was sufficient enough for the

1 purposes of due diligence?

2 MS. STEVENSON: Object to form.

3 THE WITNESS: Yeah, I don't -- I think
4 -- I wasn't really asked to comment on that. I
5 mean, I think as far as trying to understand all
6 the different -- all the different questions and
7 all of that when, you know, you're talking about
8 what happened back, I think -- what? -- in,
9 like, 2012, you know, I don't know. I don't
10 know what Enel would have done back then. I
11 don't know, or 2013. I don't know.

12 Q (By Mr. Ashworth) Okay. Well, ma'am,
13 were you not retained to opine and give an
14 expert opinion as to whether a wind developer
15 would have reasonably anticipated whether a
16 lease from a mineral owner would have been
17 required prior to construction?

18 A I think that's what we're talking about,
19 right. If you're talking about that, yes, yes.

20 Q Okay. And if a regulation required that
21 a wind developer get a lease, would it be your
22 opinion that Enel Green did not undertake
23 sufficient due diligence to determine whether
24 that was a requirement?

25 MS. STEVENSON: Object to form.

1 THE WITNESS: I don't agree with that in
2 this case, because there wasn't clarity around
3 the -- around the requirements. There wasn't a
4 clear understanding of what those requirements
5 even were. There was discussion around permits,
6 and there was discussion around leases. I mean,
7 it seems to me not even the agency itself, even
8 when they sent the notification about the --
9 that one letter that we looked at previously, it
10 talks about a permit.

11 So I don't -- I don't think that there
12 was clarity around even what needed to be asked
13 for. So I can't say that the proper due
14 diligence wasn't done, because I -- it doesn't
15 appear that there was even clarity on the part
16 of the agencies and the particular groups that
17 were involved on what was needed.

18 So I'm not sure how you -- you know, do
19 due diligence around that. I think you -- you
20 know -- you know, a case of specific due
21 diligence, if you're looking at a title report,
22 or I talked about some of the other documents
23 that we looked at, those are very specific. You
24 can look at that and ascertain what their
25 requirements are. I think you can due diligence

1 around that, but where you don't have clarity, I
2 -- you know, I don't know what you can do around
3 that.

4 Q (By Mr. Ashworth) Okay. Whose burden
5 is it to -- you know, to set clarity?

6 MS. STEVENSON: Object to form.

7 THE WITNESS: I'm -- the court's, I
8 think; right? I mean, if there --

9 Q (By Mr. Ashworth) Okay.

10 A -- you know, I mean, yeah, I'm not sure
11 what you mean by that question. That's a really
12 broad question, yeah.

13 Q Sure. You indicated that there was no
14 clarity at the time as to whether a lease was
15 required. My question would be, whose burden
16 would it be to determine whether a lease, in
17 fact, would have been required?

18 MS. STEVENSON: Object to form.

19 THE WITNESS: Well, what I think I said
20 is that there's no part -- declaring on the part
21 of the agency; right? I mean, you know, part --
22 part of what we do -- and I mentioned this as
23 part of our curative work, because, you know, we
24 reach out to a particular agency, we say, we are
25 proceeding with this project, here's all our

1 plans, here's all of our -- you know, here's
2 everything that's going to happen. I understand
3 that that happened, you know, early on, I
4 believe; all that was presented.

5 So that's what I'm accustomed to. You
6 would present all your material, you'd say
7 here's what -- here's what we're going to do,
8 here's what we need to do. And then at that
9 point, you get a response back saying, okay,
10 you're going to need, you know, a subordination,
11 or in some cases we'll have a bank that will
12 say, we're not going to give you a
13 subordination, we're going to only give you a
14 nondisturbance agreement. Okay. If that's what
15 we're going to have to work with, that's what
16 we'll work with.

17 So in my experience, it's the agency or
18 the bank or whoever the entity is, they're the
19 ones that come back and say, this is what is
20 going to be required. So I think that's where
21 my approach would be here, is you would be
22 reliant upon the particular agency or group to
23 come back to you and say, here's what we need.

24 Q (By Mr. Ashworth) Okay. And if an
25 agency doesn't come back and say, you need a

1 lease and you proceed anyways, is that -- is
2 that the agency's fault?

3 A Well, I think -- I think in one of the
4 earlier letters that I saw, the project is set,
5 you know. We're not going to be doing any
6 mining, we don't believe any kind of
7 documentation is required, and I don't believe
8 that there was a response to that.

9 So is it incumbent -- you know, being --
10 you know, you can't guess; right? I mean, I can
11 start trying to throw agreements at an agency.
12 You know, how do I know, what do I know. What
13 -- you know, you don't know what they're -- what
14 they're going to want.

15 I mean, normally -- you know, I think
16 there's possibly other projects that have been
17 developed. I mean, certainly, there's enough
18 mineral development. I think there's other
19 limestone development that's happened in Osage
20 County, and we know that it happened adjacent to
21 the project.

22 So I would think that there would be a
23 familiarity with the documentation; right? I
24 mean, I looked at the sandy soil permit, so --
25 and that -- there was one that was issued right

1 around this time frame, in 2014. So, obviously,
2 there was familiarity with the kind of documents
3 that would ordinarily be issued. There would be
4 a permit, was what I saw.

5 And so you would -- you know, you would
6 think that there would -- here's a -- you know,
7 here you go. You know, you have to get a permit
8 or what have you. But I think the other thing
9 that's at issue here is the fact that it's --
10 they didn't know that they were going to be
11 crushing material until they got into the
12 project, and then they started -- as they were
13 working, that's when this question came up so...

14 Q Okay. Well, would it be your testimony
15 that a reasonably prudent wind developer would
16 proceed with a project when there's no clarity
17 as to whether a mineral lease is required?

18 MS. STEVENSON: Object to form.

19 THE WITNESS: Because I think you're --
20 you're -- you know, if you make a request, if
21 you send all your documentation in and you don't
22 get a response, and you say, we're not mining,
23 and because I said you're -- you know, you're
24 not going to be mining, that's -- you know,
25 you're not going to be removing material, taking

1 it off site to sell it, then I don't think that
2 you're going to pursue that. I don't think you
3 see any need for it.

4 Q (By Mr. Ashworth) Okay. So -- so in
5 this instance, what we know is, is that the
6 defendants were placed on notice that a lease
7 was required, but it's your opinion that that
8 notice would not have been sufficient enough to
9 make them -- to apprise them that a lease was
10 indeed required; is that right?

11 MS. STEVENSON: Object to form.

12 Q (By Mr. Ashworth) Is that your
13 testimony?

14 A I'm not sure that we were put on notice
15 that a lease was required. I'm not sure that we
16 -- because if you look at the contents of the
17 expectation of what the lease was going to be
18 for, which the lease is for the mining, they
19 didn't expect to be any mining.

20 Q Is your testimony now that the
21 defendants were never notified that a lease was
22 required, that a mineral lease was required?

23 MS. STEVENSON: Object to form.

24 THE WITNESS: I think we saw the letter,
25 and, again, I don't remember the exact date of

1 it, but I think we saw the letter that said that
2 a -- some kind of a sandy soil permit may be
3 required; right? And at that point, you're
4 going to do some due diligence; right? You're
5 going to be calling and saying, okay, what's
6 going on, because, all of a sudden, we got this
7 letter saying that you've been out inspecting or
8 what have you, and you're saying that some kind
9 of permit is required.

10 And I think you're going to be talking
11 to them at that point, but I think the request
12 at that point was some kind of permit.

13 Q (By Mr. Ashworth) Okay. So I'll come
14 back to this issue.

15 Ma'am, do you know how many wind farms
16 there are on Indian land or within Indian
17 country?

18 A I have no idea, no.

19 Q I can let you know that that's a number
20 that's relatively small, and, I mean, I'm not
21 going to tell you that I know it off the top of
22 my head, because I don't, but I know that it's a
23 question that we can find. What I do know is
24 that it's small, but you -- it's your testimony
25 that you've worked on at least some of those

1 wind farm projects on Indian land or within
2 Indian country?

3 A That's correct.

4 Q And how many of those would you have
5 worked on?

6 A You know what? I don't remember. I
7 can't tell you precisely. I'd have to go back
8 and look at my records. A lot of what -- our
9 work, too, is involved in early stages of
10 projects, so prior site control where there may
11 be some analysis and some review. So it's
12 possible that we looked at sites, too, where --
13 for the -- you know, like you said, there's not
14 a lot of development.

15 There happens to be development out in
16 -- on tribal land in San Diego right outside my
17 back door, so I do know what's happened there.
18 But, you know, it's -- you know, it's -- it's
19 not something that happens a lot, per se. But I
20 have no idea what the numbers are.

21 Q Okay. Can you give me an estimate of
22 how many wind development projects that you
23 worked on in relation to Indian land or Indian
24 country? Is it maybe -- is it going to be more
25 than ten or less than ten?

1 A You know, I don't know. We look at
2 megawatts. You know, I consult on projects in
3 all different jurisdictions, especially in -- on
4 -- in the west. And so, you know, you're maybe
5 talking Arizona, Nevada, New Mexico, California,
6 as I said. So some of those projects go
7 forward, some of them don't. Also, you know,
8 Indian lands can be -- or tribal lands can also
9 be the subject of other rights. You know, it
10 can be access, it can be transmission.

11 We just started working on a project
12 right now that's a solar project that involves
13 solely tribal lands. So, you know, it -- I
14 don't -- I don't necessarily keep track of all
15 those numbers just because we -- you know, our
16 work is, a lot of times, early stage, so it just
17 depends. Some of it goes forward, some of it
18 doesn't.

19 **Q Okay. So it's your testimony that you**
20 **are unable to say whether you have worked on**
21 **wind development projects in relation to Indian**
22 **land or Indian country, whether it's in excess**
23 **of ten or less than ten; is that correct?**

24 MS. STEVENSON: Object to form.

25 THE WITNESS: I would say it's probably

1 more than ten, but I can't give you the -- ten
2 projects. I -- you know, I'd have to go back
3 and look at my records, because it would be over
4 the course of many years.

5 Q (By Mr. Ashworth) Okay. And when would
6 be the last time you would have worked on a wind
7 development project in relation to Indian land
8 or Indian country?

9 A A wind project. I would say probably in
10 the last two or three years, we've worked on
11 one. You're talking about wind; right? You're
12 not talking --

13 Q That's right.

14 A -- solar? I would say in the last two
15 or three years, possibly, yeah.

16 (Discussion off the record)

17 Q (By Mr. Ashworth) Ms. Centera, this is
18 a -- well, it's a summary of projects for
19 Kimberlee Centera. I have not reviewed this
20 one, but I have reviewed the list of projects on
21 your website, and I've gone through all of them,
22 and I've not seen that any of them, based on
23 location, were done on Indian reservations or
24 Indian country. So maybe I missed something.

25 So I'd like to go over these with you,

1 and you let me know what I've missed, and let me
2 know which ones that you believe of your list of
3 projects -- and we're only looking at solar --
4 would have been done on Indian land or within
5 Indian country.

6 (Discussion off the record)

7 THE WITNESS: Can you please go back up
8 for a second?

9 So some of these, I'm not necessarily --
10 first of all, I'm not necessarily going to talk
11 about all the tribal rights, if they exist,
12 because in a lot of cases, they're going to
13 exist as a matter of the severance of the
14 estate.

15 So in some of these cases, it was a
16 matter of what's evidenced on title, so it's not
17 necessarily going to be shown on here. You
18 know, I don't know if you really want to take
19 the time to try to go through all these
20 projects. I mean, I know there's projects, in
21 particular, in Wyoming and that kind of thing,
22 those wind projects.

23 Some of these projects in Kern County
24 involve a severance of an estate, but, you know,
25 some of the projects that are in Riverside

1 County involve tribal rights, but you get -- you
2 know, you're not necessarily going to see it
3 evidenced on here. If you it's going to be
4 evidenced on the list, it's not necessarily
5 going to be there.

6 This is only a very high level summary
7 of the project, so it doesn't involve all of the
8 in-depth work around the title where the tribal
9 rights would be evidence.

10 Q Sure. And I'm not looking actually on
11 what's listed under these projects, whether it
12 says, "Indian reservation," "Indian country," or
13 "Indian land." What I'm expressing to you is
14 that I have went through these projects and
15 Googled them to determine whether they were done
16 on -- within Indian country.

17 And I didn't see any, so that's why I'm
18 -- hopefully, this may refresh your memory by
19 reviewing these as to whether a particular
20 project was done on a reservation in Indian
21 country or in Indian land.

22 And I think that, perhaps, the easiest
23 way for you to do would be, since you do have a
24 copy of your report, this is -- in front of you,
25 if you can look at that yourself, if you can get

1 someone else to scroll through or flip through
2 those pages. And when you're done, let me know
3 and we can see what you've identified. Okay?

4 A And I don't -- and, I'm sorry, you're
5 saying that you Googled every single one of
6 these projects in order to determine whether or
7 not there's -- there's tribal rights?

8 Q From what -- yes, yes, from what I've --
9 I've done and, you know, I don't get paid by the
10 hour, but I did it. It's called due diligence.

11 A Right. And, again, you know, a lot of
12 it is going to be on -- evidenced on title
13 report. It may be reserved rights, it can even
14 be buried in documents, you know. A lot of it
15 is not going to necessarily be on tribal lands,
16 per se. They may have some kind of interest.

17 You know, I think we did work in
18 Riverside County on wind projects. We're
19 working on a wind project right now, we're
20 finishing up the survey work where I believe
21 it's the Morongo tribe. And if you Google that,
22 you'll see they do have an interest out in
23 Riverside County. They have rights that
24 overlay.

25 So I think, you know, part of our job is

1 to understand where those rights come from, and
2 so you're not always going to be able to Google
3 it and find the rights. If it was that easy to
4 do it, honestly, I probably wouldn't have a
5 business, because everybody could just Google it
6 and find out the information.

7 But where it comes from, looking at the
8 title documentation, it comes at looking at
9 other evidence that's going to be of record. If
10 you look at the records, you'll see out in
11 Riverside county, there is -- I believe it's a
12 tri-party agreement between the Indian tribe,
13 the tribal lands, the -- maybe the BLM and the
14 county of Riverside that have to do with the
15 development of certain land that overlays a lot
16 of the wind project.

17 And so these rights can be evidenced a
18 lot of different ways, so I -- you know, I'm not
19 sure about trying to take everyone's time and
20 try to go through all these projects and telling
21 you -- tell you all the ones that could have,
22 you know, different Indian rights. But I can
23 tell you on the Mountain View -- the Mountain
24 View 1 and 2 project, which I'm not sure if it's
25 on here, because it's one that's in the very

1 early stages. It's one that we're working on a
2 repower for right now.

3 Q Okay. In regards to time, I mean,
4 ma'am, this is going to be probably my only time
5 to speak with you before trial, so I am willing
6 to spend that time now. In regards to tribal
7 rights, I'm not looking -- my question's not
8 about tribal rights. It's about projects that's
9 done on a reservation or within Indian country
10 or has any -- you know, involves Indian property
11 as it involves in this case.

12 You have previously testified that you
13 had perhaps in excess of ten cases involving
14 Indian land or Indian country, wind farms within
15 Indian country. And so my question is, you
16 know, let me know which ones they are.

17 So I will give you some time to look at
18 your report and your project list to -- kind of
19 to let me know if you can recognize any ones
20 that you've done on a reservation, within Indian
21 country, or on Indian land.

22 MS. STEVENSON: Object to form.

23 THE WITNESS: I would say we'd want to
24 look at the Mountain View 4 project.

25 Q (By Mr. Ashworth) Okay.

1 A This one right -- and if you could keep
2 scrolling, please. I'm going off my
3 recollection, too, so...

4 Q **Sure.**

5 A I think really in order to give you an
6 accurate and complete list, I would have to go
7 back through all my projects and take a look at
8 all my material and try --

9 Q **Well, I --**

10 A -- and come up with a list for you.

11 Q **Sure. Well, at least specifically for**
12 **this list that you have on your CV that you**
13 **attached to your report -- I guess you attached**
14 **it to your report because you thought that was**
15 **relevant to this case, so that's why I wanted to**
16 **know, as to these cases, which ones.**

17 A All the Foote Creek projects that are
18 out in Wyoming also involved Indian rights. I
19 mean, I think you said it yourself; there hasn't
20 been a lot of projects developed on tribal
21 lands. Also I would say that a lot of our work
22 is very early stage, and some of it proceeds and
23 some of it doesn't. I think there were also
24 some tribal rights on the Jupiter tax equity.
25 That's the NG, so --

1 Q When you say, "tribal rights," was it
2 done on a reservation or Indian land or dealt
3 with Indian property?

4 A There were some -- there were some
5 tribal property that was involved. I don't
6 believe any of the landowners are -- is tribal.
7 And I believe there were some tribal rights on
8 some of the Kern County projects, but I can't
9 tell you specifically which ones of those. I'd
10 have to go back and look at my records to be
11 able to tell you exactly which ones.

12 Again, I would have to look at the
13 Mountain View projects that are in Riverside
14 County, because I believe that there was some
15 tribal lands involved in those. It could have
16 been on the transmission line. I don't remember
17 specifically.

18 And I think we mentioned the Foote Creek
19 projects so -- there may have been some Indian
20 or -- pardon me -- tribal rights on the Lost
21 Hills, but -- in Kern County, but I'd have to go
22 back and look at that.

23 Q But that's solar, though; right?

24 A That's solar, correct.

25 Q And we're looking relative to wind

1 projects.

2 A Can you go back up for a moment? I
3 think on the Storm Lake, I'd need to go back and
4 look at that. And could you scroll up, please?
5 Yeah, I think just on the Storm Lake. Thank
6 you. Yeah, some of -- some of the ALTA survey
7 projects, I can't speak off the top of my head
8 on those. We'd have to go back and look at the
9 -- the title work on that.

10 Q Okay. So we finished scrolling through
11 all of those pages. There were 22 pages there,
12 and based on our review, you had questions about
13 Storm Lake, Mountain View, and Fort [sic] Creek
14 as possibly being projects that you have worked
15 on that were wind development projects on Indian
16 land, within Indian country; is that correct?

17 A I think I also mentioned the Foote Creek
18 projects in Wyoming.

19 Q Yes, yes, I believe I mentioned that; is
20 that correct?

21 A On -- on the basis of this review here
22 at the moment, it sounds correct.

23 Q Yes. And we would later be able to
24 consult with any reservation maps that defendant
25 may determine that those were indeed Indian

1 country projects. Would you -- yeah.

2 Are there any other projects that you
3 have done that are not on this list in relations
4 to lease negotiations for wind projects?

5 A There could very well be. I've been
6 doing this work for a very long time, so there
7 could very well be.

8 Q As you sit here today, are you able to
9 point to any project, wind development project
10 where you were involved with the lease
11 negotiation? Are you able to say -- or point to
12 any project that's not listed?

13 A There -- actually, there's many projects
14 that are not on this list that never got
15 developed or could be under development right
16 now. So they're not on this.

17 Q Okay.

18 A The primary ones that are on this list
19 are the ones that have gone through a financing,
20 so they're in the public domain. If they're not
21 in the public domain, then I don't talk about my
22 clients' project.

23 Q Sure. Would any of those not listed
24 have involved tribal lands or Indian country?

25 A There's a certain amount of projects

1 that are in Arizona and New Mexico and Nevada
2 that are -- are in various stages of
3 development, and actually in Utah that are in
4 various stages of development that may include
5 some parts of tribal land. They may not
6 necessarily be the -- you know, for the primary
7 site, but they're for the transmission or that
8 type of thing. So there may be some crossing
9 through some tribal land.

10 Q I'm going to look at Page 5 of your
11 expert report.

12 (Discussion off the record)

13 Q (By Mr. Ashworth) Right there. In the
14 second paragraph, this first sentence starts
15 with, "I have reviewed the six surface leases
16 and the project background. Upon this review,
17 it is clear that while the mineral interest is
18 well established, there is no evidence to
19 conclude that the project site would need to
20 enter into a mineral lease."

21 Did I read that correctly?

22 A Yes.

23 Q The second sentence states, "Upon this
24 review." When you say, "this review," I assume
25 you're referring to the review of the materials

1 you cited in the sentence that immediately
2 precedes; is that correct?

3 A Correct. The six surface leases and the
4 project background.

5 Q What do you mean by "project background"
6 that you reviewed that caused you to believe
7 that there is no evidence to conclude in your
8 report that a mineral lease was needed?

9 A I think the project background that we
10 were looking at was the initial background
11 that's set forth in the FTI report that talks
12 about just a timeline for the development and
13 what happened. So if you're just looking at the
14 face of -- on the face of the surface leases and
15 the overarching project background, I think
16 that's what we're talking about.

17 Q You say, "we're talking about." That's
18 what you were -- is that you?

19 A That's what I'm --

20 Q Or is there someone else?

21 A That's what I'm talking about.

22 Q Okay. When you wrote this, you had not
23 been provided with the document, I believe it's
24 -- Exhibit 36 is a letter from the BIA.

25 (Discussion off the record)

1 Q (By Mr. Ashworth) Give me one second.

2 My computer's...

3 (Discussion off the record)

4 Q (By Mr. Ashworth) Ma'am, have you seen
5 this letter before?

6 A Can I see the top part of the letter?
7 Okay. Can you scroll down? I think I have seen
8 this before.

9 Q You believe you have?

10 A I think I've seen this. Trying to
11 think. Could you keep scrolling, please? Yes,
12 I have seen this letter, yes.

13 Q Okay. If we go back to the first page,
14 I'm going to look at the second paragraph right
15 there. The last sentence, in particular, it
16 says -- this is a letter from Andrew Yates, at
17 the time, I believe, the chairman of OMC to
18 David Boyce. That sentence says, "Activities
19 occurring within or affecting the Osage mineral
20 estate may be subject to a range of federal
21 regulations" -- I'm sorry -- "regulatory
22 requirements, including the need to secure a
23 federal permit or lease to undertake such
24 activities, pursuant to 25 CFR Sections 411 and
25 414."

1 You have read that sentence before;
2 correct?

3 A Yes.

4 Q Okay. And before I get any further, I
5 will mark this as Exhibit Number 41. I believe
6 that's the correct number.

7 Ma'am, did you read that sentence before
8 you wrote your expert report, wherein you state
9 that there was no evidence to conclude that
10 project would have needed a minerals lease?

11 A No, I did not.

12 Q So you read this sentence after your
13 expert report; correct?

14 A Right. I --

15 Q Okay. And this letter to David Boyce,
16 who's -- my understanding is now or was the CEO
17 of Osage Wind, LLC. And I'd also represent that
18 it appears that when it references 411, 414, if
19 you were to go to those sections, they don't
20 exist. By looking at the titles, it would have
21 indicated 211 and 214.

22 Is it your understanding that this would
23 at least provide some evidence that -- for Osage
24 Wind to have concluded that a lease would have
25 been needed, pursuant to either the -- or

1 pursuant to the federal regulations?

2 MS. STEVENSON: Object to form.

3 THE WITNESS: I think you'd have to look
4 at it in its entirety, because it says, to the
5 extent that the project requires a lease or a
6 permit. So I think this is -- it doesn't change
7 my opinion. I think it's informational.

8 Q (By Mr. Ashworth) Okay.

9 A It's -- to me it -- in my view, it's not
10 conclusive. It's saying if a lease is required,
11 so I --

12 Q Okay.

13 A -- don't believe that it's conclusive.

14 Q Sure. You indicate in your report there
15 is no evidence to conclude that the project site
16 would have needed a mineral lease. You say
17 there's no evidence. Now, reviewing this, if
18 this is provided before the construction of the
19 project, you still believe that this does not
20 provide any evidence that the defendants should
21 have or should have at least looked into
22 obtaining a permit or lease?

23 MS. STEVENSON: Object to form.

24 Q (By Mr. Ashworth) For the minerals?

25 A Well, I think this letter is reciting

1 what we already know; right? I mean, I'm not --
2 I'm not clear on the date of this letter, but I
3 think it's -- the letter is saying that if a
4 lease is required, that these are -- you know,
5 you would -- I think what this is saying is
6 you'd have to negotiate a lease on the ordinary
7 terms and conditions. So --

8 Q Sure. And it would be -- you would like
9 the court to believe that the defendants had no
10 notice -- the defendants had no notice, prior to
11 the construction of the project, the wind power,
12 that a lease was needed?

13 MS. STEVENSON: Object to form.

14 THE WITNESS: Yeah, I -- I'm not sure
15 that that's what we said. I think that we were
16 not planning to mine, and I think the conclusion
17 of the court was that there was mining that took
18 place, and so then a lease is required. But
19 that happened after the fact. So I don't see
20 this as being conclusive to say that a lease or
21 a permit or what have you is going to be
22 required, because then even this is
23 contradictory to what they said later -- in
24 their later letter, when they went out there and
25 they said, well, you need a permit.

1 So, you know, I'm not sure that -- I
2 don't believe that this is conclusive to
3 indicate that you -- that you needed a lease,
4 because I think the project maintained from the
5 very beginning that no mining was going to take
6 place.

7 **Q Okay.**

8 **A And so (inaudible).**

9 THE REPORTER: I'm sorry. Could you
10 repeat that?

11 THE WITNESS: Oh, just that no mining --
12 the project had maintained that there was no
13 mining that was going to take place, and so
14 there was no lease that was needed.

15 **Q (By Mr. Ashworth) Okay. So if -- it's**
16 **your opinion that it has to be clear and certain**
17 **that a lease is required before a lease should**
18 **be obtained? If it is not clear, you believe**
19 **it's completely fine for a reasonably prudent**
20 **wind developer to move forward with a project**
21 **without obtaining a lease?**

22 MS. STEVENSON: Object to form.

23 THE WITNESS: I think that you know your
24 project is going to be the subject of due
25 diligence, and you want to make sure that you've

1 taken all the proper steps. But I don't see
2 anything in here that says that, you know, you
3 have to have a -- because you're not planning to
4 mine.

5 So I don't see this as saying -- it
6 says, to the extent that the project requires a
7 lease or even a permit. So even in this letter,
8 it's not really clear, you know, what it is that
9 you're going to need to get. But the letter is
10 simply saying that if you're going to -- you
11 know, I'm not sure what it says. Okay.

12 Q (By Mr. Ashworth) Okay. If a
13 reasonably prudent wind developer had received a
14 letter indicating that they may or may not be
15 required to get a lease pursuant to a federal
16 regulation and that wind developer disagrees,
17 would it not be incumbent upon a reasonably
18 prudent wind developer to have gone through the
19 administrative process with that regulatory
20 authority to determine whether or not it was
21 indeed required?

22 MS. STEVENSON: Object to form.

23 THE WITNESS: Well, I think, as I
24 understand it, the project did go through all
25 the permitting and all the permitting

1 requirements, so I think this is not part of the
2 permitting process, per se. So I think this
3 falls out -- I -- you know, also, I'm looking at
4 this out of context in relation to all the other
5 material. I think you have to take all the
6 other information together.

7 And it seems to me, if you look at all
8 the different correspondence, that if this was
9 the position of, you know, the tribe at the
10 time, then they should have provided the lease.
11 I don't believe that a lease was ever provided.
12 I mean, I said, you know, even in the course of
13 our, you know, curative negotiations, if an
14 entity says, you know, you've got to have a
15 non-disturbance agreement, then they send us the
16 non-disturbance agreement. They say, here's our
17 form, and even this says, so I'm --

18 Q (By Mr. Ashworth) I'm sorry. Is it
19 your opinion that if the tribe took the position
20 that a lease was required, it's -- they're
21 required to give the lease to the wind
22 developer? Is that what you're trying to say?

23 MS. STEVENSON: Object to form.

24 THE WITNESS: I would think that's what
25 would happen, you know, I --

1 Q (By Mr. Ashworth) Okay.

2 A I mean, I think it's -- I mean, again,
3 you know, if you look at a lot of what's already
4 been well established in the county, you know,
5 these documents are not hidden, these forms are
6 not hidden. They're pretty customary, they're
7 pretty standard.

8 So it seems to me that, if there was
9 clarity around it's a permit, you know, you just
10 send a permit and say, here you go, and, you
11 know, get the permit filled out and get it back
12 to us. But I don't see that happening here. I
13 see this being kind of a discourse over, maybe
14 if it's required, and if it is, you're going to
15 have to follow this procedure.

16 So, I mean, it doesn't seem to me that
17 this is saying, a permit's required, here's your
18 permit. You know, they clearly have the form.
19 I mean, there's plenty of them out there. So
20 I'm not sure why in this case they wouldn't have
21 provided the form.

22 Q Okay. So it's your testimony that
23 because there was no clarity at the time as to
24 whether or not a lease was required, it's your
25 testimony, as an expert witness in the industry,

1 that it would have been completely reasonable
2 and fine for a reasonably prudent,
3 knowledgeable, and experienced wind developer to
4 just move on without trying to determine or get
5 clarity?

6 MS. STEVENSON: Object to form.

7 THE WITNESS: I'm saying that if, in
8 fact, a permit or a lease was required and it's
9 well established in the county that there is
10 many of them out there, that that would have
11 been part of this letter, here you go, here's a
12 permit, here you go.

13 Q (By Mr. Ashworth) Okay. We're talking
14 about lease.

15 A Okay. Well, this says, "requires a
16 lease or a permit," so, you know, I mean, I
17 think later on they asked for a permit; right?
18 So this says, "lease or permit." Later on they
19 asked for a permit. I mean, this is kind of
20 what I'm talking about. I guess as the project,
21 you're supposed to get what they want. You
22 know, I don't know.

23 This is why I -- I'm a little bit kind
24 of confused about their requirements here. It
25 seems to me that, yes, being the agency that

1 needs to issue whatever it is that needs to be
2 issued, if it is a lease or if it's a permit,
3 that that would be what they would send. Here's
4 the document, and then it would be up to the
5 project to say, no, we don't think we need a
6 lease, we need a permit, or whatever.

7 Q Okay. We have been going on for about
8 an hour. Let's take about a five-minute break.

9 A Thank you.

10 (Short break at 4:05 p.m., resumed at 4:12 p.m.)

11 Q (By Mr. Ashworth) Ma'am, we're back on
12 the record. We took a quick break. And is
13 there anything that you would like to change
14 about your previous testimony, that you'd like
15 to do so now?

16 A No.

17 Q Okay. I'm going to look at your expert
18 report and pull up Appendix A. It's page -- I'm
19 going to look at Page 3 of Appendix A. It
20 appears to me that Appendix A is a list of
21 documents that were provided to you.

22 A Sounds right, yes.

23 Q Do you know if any that you -- scratch
24 that.

25 Do you know if you reviewed all of the

1 documents that were provided or that are listed
2 in Appendix A?

3 A You know what? I'd have to go back and
4 refresh my memory. I looked at a lot of them.
5 I would have to go back and refresh my memory to
6 say that I looked at every single one.

7 Q All right. Is it possible that you may
8 have not looked at all of them?

9 A It's possible. This is a list of all
10 the documents that were provided, so I focused
11 on the documents that were pertinent to my
12 report. And so I would have focused on those
13 documents, so there may have been documents
14 provided to me that I did not look at because
15 they weren't pertinent.

16 Q Listed here kind of in the middle of the
17 screen is some documents that says -- starts
18 with JFWCO-Osage As-built. I have not -- do you
19 know what these documents are?

20 A That is the as-built ALTA survey for the
21 project.

22 Q This is an as-built for the subject
23 project that was given to ALTA? Or was it --

24 A It's customary in these projects to
25 prepare both a preconstruction and then post

1 construction survey that shows the location of
2 all the improvements. So this particular survey
3 was prepared by John Watson, and so it just
4 depicts the location of all the improvements and
5 all the property that comprises their project.

6 Q Okay. And this would have been pre and
7 post project?

8 A This particular is an as-built, so I --
9 I -- from my review, it looks to me like it's
10 just post construction, so it shows everything
11 post construction that -- from my high level
12 review.

13 Q Did you rely upon any of the information
14 contained in these ALTA as-builts for your
15 opinion?

16 A I did not.

17 Q Okay. There was nothing that you
18 noticed as being helpful for you to form your
19 opinion; is that correct?

20 A I'm sorry. Say that again.

21 Q Sure. There's nothing within these
22 as-builts, these ALTA as-builts that you believe
23 were important for you to form your opinion?

24 A No, no, not necessarily.

25 Q Okay. Do you recall if anything within

1 these ALTA as-builts that quantified the amount
2 of minerals that were excavated?

3 A In the ALTA survey, no.

4 Q I'm sorry. Is that a no, you don't know
5 if it --

6 A No.

7 Q -- included that information?

8 A Not quantified in the ALTA survey, that
9 I saw. Not that I -- that I saw.

10 Q Okay.

11 A If it is, I didn't see it.

12 Q Ma'am, I'm going to -- well, scratch
13 that.

14 Well, I'll also look -- the place where
15 I was in my notes are not stapled. Give me one
16 second.

17 Ma'am, do you know anything about
18 Chapter 25 CFR Part 165.500? Have you ever
19 heard of that?

20 A I'm not familiar with that, no.

21 Q It's leasing requirements for tribal
22 lands as it relates to wind energy projects. Do
23 you know anything about that now?

24 A I can't -- I can't say that I could tell
25 you much about that, no.

1 Q You have no recollections of ever being
2 involved in a project where that -- leases under
3 that section was undertaken; is that correct?

4 A Well, I have -- I have no recollection
5 of that specific provision. I'm -- I've not
6 looked at it.

7 Q Ma'am, I'm going to -- earlier --
8 scratch that.

9 Earlier you had testified in your --
10 about your report. You had indicated that if a
11 wind developer had been apprised of the
12 necessity of a mineral lease prior to
13 construction, it was your testimony that they
14 would have considered more practical options; is
15 that right?

16 MS. STEVENSON: Object to form.

17 THE WITNESS: I -- they would have
18 looked at options, if they knew that they would
19 have to get a mining lease, I think.

20 Q (By Mr. Ashworth) Okay.

21 A I think I would look at other options.

22 Q And I think your testimony was more
23 specific -- is that if they were aware that they
24 needed a mineral lease but that the tribe -- or
25 they were unable to get a mineral lease, you

1 believe that they would have considered other
2 options or alternative options?

3 MS. STEVENSON: Objection to form.

4 THE WITNESS: I'm not sure if I said
5 that, but I do know that if you -- if they would
6 have known that they were going to have to get a
7 mining lease, then I would think that they would
8 have looked at other alternatives as to bringing
9 the materials onto the site.

10 Q (By Mr. Ashworth) And it was your
11 testimony that you don't know if the defendants
12 actually looked at other alternative options at
13 the time; is that correct?

14 A Well, I think -- was it Mary Kathryn put
15 up an invoice from the project that actually
16 showed that they did secure, you know, material
17 from off the site? So I think we know that,
18 according to that invoice. So I don't recall
19 seeing that prior to this, but I think we know
20 that, that they did actually acquire some
21 material from off the site.

22 Q Sure. That -- I'm sorry. That purchase
23 order did not -- it was for minerals. It's your
24 testimony that that was brought in as a
25 substitute for something? Is that your

1 testimony?

2 MS. STEVENSON: Object to form.

3 THE WITNESS: No, I'm not in the
4 position to comment on that. I am merely saying
5 that it appeared from that invoice that they did
6 bring onto the site some other material. I
7 presume it probably took less for the roads, but
8 I don't know. I wasn't involved in the
9 construction, so I don't know. But based upon
10 my experience, I wouldn't be surprised, I think
11 is what I said, that they would bring materials
12 on the site. It frequently happens for the
13 roads, that they --

14 Q (By Mr. Ashworth) Okay.

15 A -- have other material.

16 Q Would it be your -- scratch that.

17 What would have been an alternative
18 option in this case if a mineral lease was not
19 -- was required and wasn't taken?

20 A As far as constructing foundations are
21 concerned relative to the limestone? Is that
22 what you're asking?

23 Q No. My question is as it relates to the
24 minerals, the Osage minerals that were taken,
25 what would have been the alternatives that the

1 defendants could have considered instead of
2 taking and using those minerals?

3 MS. STEVENSON: Object to form.

4 THE WITNESS: Well, I think you would
5 probably do something similar to what they did
6 to the road -- for the roads, but they would
7 look at acquiring a resource from off the site
8 and bringing that in. I mean, obviously, they
9 knew in advance that they were going to need the
10 material for the roads, so they contracted for
11 that.

12 So it seems to me if you knew in advance
13 that you were going to need to replace the --
14 this limestone or what have you in the turbine
15 foundations, that you would have similarly
16 contracted in advance in order to bring in some
17 alternative minerals. And I think we said that
18 there's other, you know, quarries and other
19 facilities in the county, and I think we saw
20 that evidenced by all the other permits; right?
21 There's many other permits, or other
22 developments for this kind of material that is
23 readily available. So they would have been able
24 to bring it in from some other source.

25 Q Okay. So it would be your testimony

1 that one of the options would have been, instead
2 of excavating the minerals and using them -- and
3 using them, instead of using them, they could
4 have just set them aside and brought in
5 substitute fill?

6 A Yes.

7 Q As a way to negate the lease
8 requirement?

9 A Right. I mean, and I -- because I said
10 I've seen that happen in other cases where there
11 were possibly similar requirements, you know,
12 with not mixing, you know, topsoil, or for weed
13 control, whatever it might be. And so you just
14 take out that, you make special allowances for
15 it, and then you bring in materials that, you
16 know, meet the requirements, from another
17 source.

18 Q And if the defendants had a question as
19 to whether a lease was needed, why didn't they
20 -- why did they choose -- or do you know why
21 they chose to use Osage's minerals instead of
22 getting substitute minerals?

23 MS. STEVENSON: Object to form.

24 THE WITNESS: You know, I -- you know, I
25 don't know. I can't put myself exactly in your

1 shoes, except that in my experience of
2 construction, you know, you don't always know
3 what you're going to get until you start with
4 construction. So that may have been a factor
5 here is, when they started the construction,
6 then they encountered all this limestone so --

7 Q (By Mr. Ashworth) Okay.

8 A The only thing I could think of. I
9 don't know. I wasn't there when they made the
10 decision.

11 Q I'm going to introduce another exhibit
12 into the record. I believe it possibly was
13 introduced in a previous deposition, but I'm not
14 sure. I'm going to name it Exhibit Number 42.
15 It's a change order form.

16 (Discussion off the record)

17 Q (By Mr. Ashworth) This would have done
18 -- this change order -- first off, have you seen
19 this before?

20 A No, I haven't. I have not.

21 Q Okay. Well, I would represent to you
22 that this was a change order. At least based on
23 the records, it appeared that it was done in
24 August of 2014, that during the project certain
25 specifications were called for, and then later

1 on it was determined that they needed to be
2 updated. And this was what this change order
3 would have been -- taken place. And I believe
4 it's -- the contractor is asking for more money.

5 And this is part of the justification
6 for the change. In there, in this paragraph in
7 the middle of the page, I want to point at where
8 it starts with, "Given the issue." I believe
9 that's the fourth point, bullet point. "Given
10 the issue with Osage Nation, the disposal of
11 excavated rocks and import of backfill --
12 backfilling material from outside the county was
13 a more expensive solution."

14 Did I read that correctly?

15 A Yes.

16 Q So I guess my question before this was,
17 if not using the minerals that were excavated,
18 setting them aside and getting substitute
19 materials from outside the project area, why was
20 that not used? And based on this change order,
21 it appears that that option or solution was not
22 used because it was more expensive.

23 Would you have any reasons to disagree?

24 A You know what? I have not seen this
25 change order before. I don't know the basis for

1 it, so it's hard for me to comment on the
2 totality of it, just based upon that sentence.

3 Q Sure. It just appears that the
4 defendants made a calculated decision as to
5 whether to obtain the lease or not, and -- or go
6 with some type of alternative. And they decided
7 that the alternative would have been more
8 expensive, and they went with using Osage's
9 minerals.

10 MS. STEVENSON: Object to form.

11 Q (By Mr. Ashworth) Is your understanding
12 of that different?

13 A Yeah, I think that's a stretch, from
14 just reading that particular sentence. I mean,
15 I think -- it seems to me that says from outside
16 of the county. Well, it seems to me that -- I
17 mean, I think we said that there's a lot of
18 resources within the county.

19 So I'm not sure that I'm surprised by
20 the fact that if they have to -- I don't know.
21 This is a pretty big county, maybe. I'm not
22 sure, but it seems to me that if you're going to
23 have to go way outside of the county to try to
24 find a replacement in any case, no matter what
25 kind of project you're constructing, there's

1 going to be -- it's going to be more expensive;
2 right? So I don't see that -- and I'm not sure
3 that I draw the conclusion just based on that.
4 I don't think --

5 **Q Sure.**

6 **A** -- it says anything about leasing. I
7 think it just -- to me, I think, you know, it
8 makes -- it makes sense. If you're going to
9 have to go further, you know, in order to find a
10 replacement, yeah, it's going to -- it's going
11 to cost more. But, I mean, it -- so it kind of
12 is what it is. But it's all --

13 **Q Uh-huh.**

14 **A** -- there.

15 **Q Sure. Have you ever heard of the**
16 **saying, it's better to ask for forgiveness than**
17 **to ask for permission?**

18 **A** Sure, yeah, I've heard of that.

19 **Q Have you ever ran across, in your**
20 **experience in the industry, of a wind developer**
21 **or renewable energy developer to proceed without**
22 **permission with the expectation that it would be**
23 **easier for them to ask for forgiveness**
24 **afterwards?**

25 **MS. STEVENSON:** Object to form.

1 THE WITNESS: Yeah, I -- you know,
2 really? You know, how many wind developers are
3 out there on how many projects? I -- I don't
4 know, you know.

5 Q (By Mr. Ashworth) I'm asking about your
6 experience.

7 A Oh, my experience. You know, I'm not
8 aware of -- you know, I'm not aware of very many
9 developers that would do that. You know, I
10 suppose, on a case-by-case basis, but...

11 Q And I'd say outside of the defendants,
12 are you aware of any other developers who would
13 do that?

14 MS. STEVENSON: Object to form.

15 THE WITNESS: Yeah, I'm not even sure
16 how to answer that, to be honest with you.

17 Q (By Mr. Ashworth) How do you not know
18 how to answer that? I mean, it's in your
19 experience.

20 A Well, it's -- you know, how many
21 developers are going to take risks, and what
22 kinds, and, you know, I'm not really sure. If
23 you -- if you want to give me a scenario,
24 perhaps. But, I mean, these projects are -- you
25 know, most of the projects that we're working on

1 are very large scale projects. There's, you
2 know, hundreds of millions of dollars to -- that
3 can be at stake.

4 So you're asking me do the people that I
5 work with and the clients that I cultivate, do
6 they take that philosophy on their projects? I
7 would say the answer is no. I don't -- I don't
8 prefer to work with those kinds of people,
9 because, you know, it flies in the face of doing
10 the right thing and having integrity on
11 projects. And in my experience, that never
12 bodes well. So I would say I make it a habit of
13 not working with those kinds of people.

14 **Q Well, I think you answered my question**
15 **with that, and I have nothing further.**

16 MR. ASHWORTH: I pass the witness.

17 MS. STEVENSON: Thank you. I'd like to
18 take a five-minute break just to confer with
19 co-counsel to determine if defendants have any
20 questions for this witness.

21 MR. ASHWORTH: Sure.

22 MS. NAGLE: Okay. That sounds good.
23 Five-minute break.

24 (Short break at 4:32 p.m., resumed at 4:38 p.m.)

25 MS. STEVENSON: Defendants reserve

1 questions for this witness, so if we just -- we
2 will read and sign the deposition.

3 THE REPORTER: Reserve this witness
4 what?

5 MS. STEVENSON: We reserve our questions
6 for this witness for future proceedings, and the
7 witness will read and sign.

8 MR. ASHWORTH: Does the OMC have any
9 redirect?

10 MS. NAGLE: We don't have any redirect
11 at this time. Thank you.

12 (Deposition concluded at 4:39 p.m.)
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1 JURAT

2 STATE OF OKLAHOMA)

3)

4 COUNTY OF _____)

5

6 I, KIMBERLEE CENTERA, do hereby state
7 under oath that I have read the above and
8 foregoing deposition in its entirety and that
9 the same is a full, true and correct
10 transcription of my testimony so given at said
11 time and place, except for the corrections
12 noted.

13

14 _____

15 KIMBERLEE CENTERA

16 Subscribed and sworn to before me, the
17 undersigned Notary Public, in and for the State
18 of Oklahoma, by said witness, on this, the _____
19 day of _____, 2021.

20

21 _____

22 NOTARY PUBLIC

23 My Commission Expires: _____

24 Job No. 150594

25 UNITED STATES vs. OSAGE MINERAL COUNCIL, et al.

ERRATA SHEET

DEPOSITION OF KIMBERLEE CENTERA

REPORTED BY: JANNA PIRTLE, CSR, RPR

DATE OF DEPOSITION TAKEN: MAY 14, 2021

JOB FILE NO. 150594

PAGE LINE IS SHOULD BE

1 CERTIFICATE

2 STATE OF OKLAHOMA)

3)SS:

4 COUNTY OF OKLAHOMA)

5 I, JANNA PIRTLE, Certified Shorthand
6 Reporter within and for the State of Oklahoma,
7 do hereby certify that the witness was by me
8 first duly sworn to testify the truth, the whole
9 truth, and nothing but the truth in the case
10 aforesaid, taken in shorthand to the best of my
11 ability and thereafter transcribed; that the
12 same was taken pursuant to stipulations
13 hereinbefore set out; and that I am not an
14 attorney for nor relative of any of said parties
15 or otherwise interested in the event of said
16 action.

17 IN WITNESS WHEREOF, I have hereunto set
18 my hand and seal this 24th day of May, 2021.

19
20 
21 _____

22 Janna Pirtle, CSR, RPR

23 CSR No: 1815

24

25

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